United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1906.

No. 1730.

GEORGE B. STARKWEATHER, APPELLANT,

vs.

JOHN T. DYER, HERBERT W. T. JENNER, E. SOUTHARD PARKER, WILLIAM E. BARKER, ELLIS SPEAR, ALBERT C. PEALE, BRAINARD H. WARNER, JOHN D. CROISSANT, JOHN O. JOHNSON, TRUSTEES; HENRIETTA STEWART, WILLIAM H. YERKES, AND CHARLES A. BAKER, PARTNERS TRADING UNDER THE FIRM NAME OF YERKES AND BAKER; S. HERBERT GIESY, HANNAH CAMPBELL, EMMA McWILLIAMS, ANNA MAY CAMPBELL, JAMES N. CAMPBELL, WILLIAM J. CAMPBELL, BENEDICT F. CAMPBELL, HANNAH MAY CAMPBELL, JOSEPH D. CAMPBELL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

In the Court of Appeals of the District of Columbia.

No. 1730.

GEORGE B. STARKWEATHER, Appellant,
vs.
JOHN T. DYER ET AL.

a Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER, HERBERT W. T. JENNER, E. SOUTHARD PARKER, WILLIAM E. BARKER, ELLIS SPEAR, ALBERT C. PEALE, BRAINARD H. WARNER, Complainants,
vs.
JOHN D. CROISSANT, JOHN O. JOHNSON, Trustees; HERIETTA STUART, GEORGE B. STARKWEATHER, WILLIAM H. YERKES, and CHARLES A. BAKER, Partners, Trading Under the Firm Name of Yerkes and Baker; S. HERBERT GIESY, HANNAH CAMPBELL, EMMA MCWILLIAMS, ANNA MAY CAMPBELL, JAMES N. CAMPBELL, WILLIAM J. CAMPBELL, BENEDICT F. CAMPBELL, HANNAH MAY CAMPBELL, JOSEPH D. CAMPBELL, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned the following papers were filed, and proceedings had, in the above-entitled cause, to wit:—

1 *Directions to Clerk for Preparation of Record.*

Filed July 10, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23436.

JOHN T. DYER ET AL., Complainants,
vs.
JOHN D. CROISSANT ET AL., Defendants.

The Clerk of the Supreme Court of the District of Columbia will prepare the transcript of record in this cause on appeal to the Court of Appeals of the District of Columbia; such transcript to consist of the following records, papers and proceedings.

1. Second amended bill filed June 29, 1903.
2. Exhibits (9) filed with second amended bill.

3. Copy of plat filed July 24, 1902, with original bill, marked "Complainants' Exhibit No. 1."

4. Answer of defendant George B. Starkweather filed July 24, 1902.

5. Joint and several answers of the other defendants.

6. Replications of the several complainants.

7. Order appointing Hugh T. Taggart, guardian *ad litem* for infant defendant, Joseph D. Campbell, filed July 16, 1903.

8. Order substituting Sarah J. Croissant, widow, and De Witt C. Croissant, heir at law, of John D. Croissant deceased, as parties defendant, filed April 17, 1906.

9. Decree sustaining bill, filed May 4, 1906, and appeal
2 of George B. Starkweather and order of severance.

10. Memorandum showing giving of bond, extension of time for filing transcript, etc.

11. The testimony in behalf of complainants together with exhibits included therewith.

12. The testimony in behalf of defendants together with plat and exhibits included therewith.

13. Bill, answer, final decree and opinion of the court in Equity No. 20,360, Starkweather *v.* Warner, *et al.*

RICHARD P. EVANS,
Attorney for Defendant, George B. Starkweather.

(Here follows diagram marked p. 3.)

4 *Second Amended Bill.*

Filed June 29, 1903.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

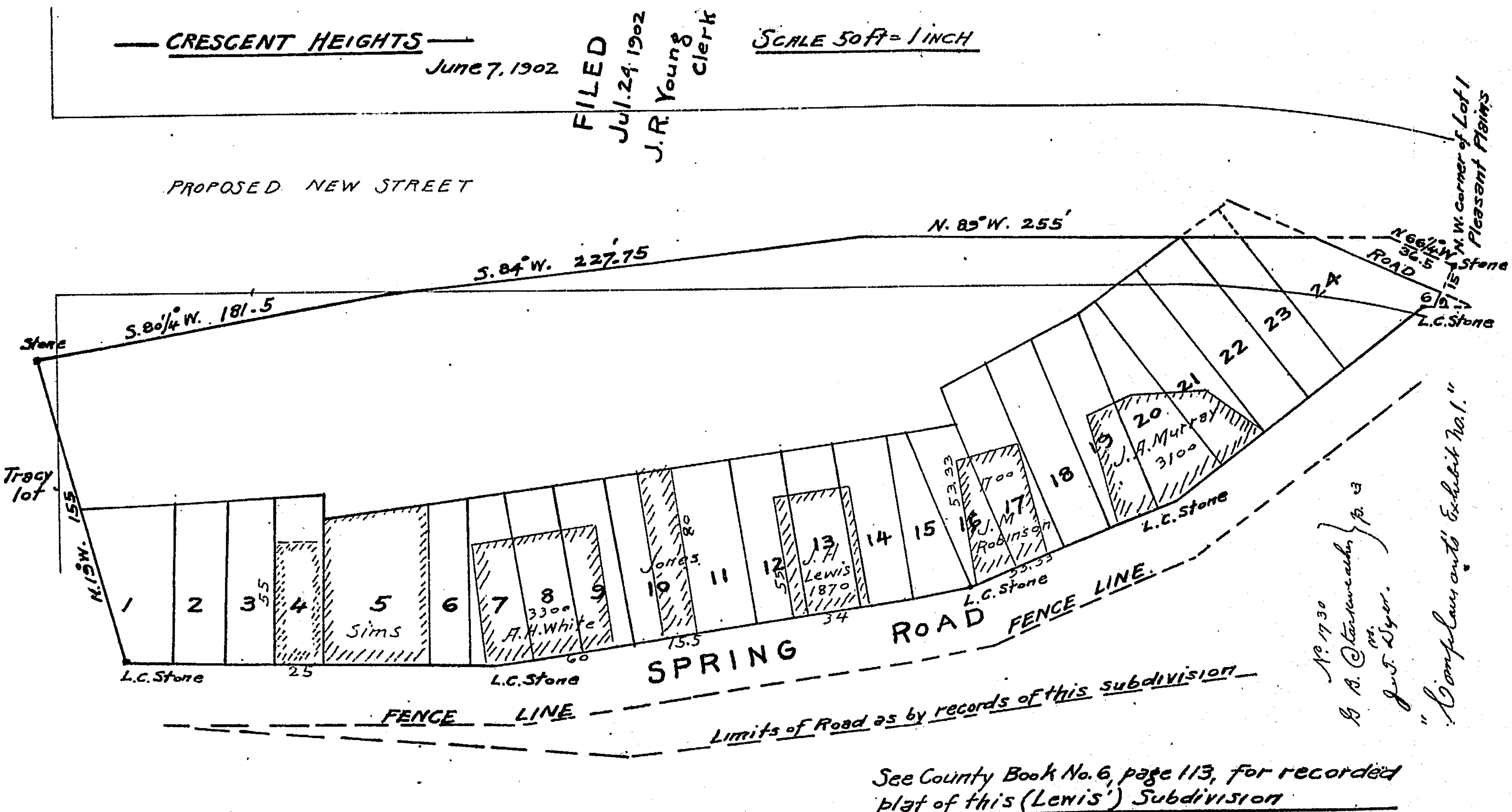
JOHN T. DYER, HERBERT W. T. JENNER, E. SOUTHARD PARKER, WILLIAM E. BARKER, ELLIS SPEAR, ALBERT C. PEALE, BRAINARD H. WARNER, Complainants,

vs.

JOHN D. CROISSANT, JOHN O. JOHNSON, Trustees; HERIETTA STUART, GEORGE B. STARKWEATHER, WILLIAM H. YERKES, and CHARLES A. BAKER, Partners, Trading Under the Firm Name of Yerkes and Baker; S. HERBERT GIESY, HANNAH CAMPBELL, EMMA MCWILLIAMS, ANNA MAY CAMPBELL, JAMES N. CAMPBELL, WILLIAM J. CAMPBELL, BENEDICT F. CAMPBELL, HANNAH MAY CAMPBELL, JOSEPH D. CAMPBELL, Defendants.

Leave in that behalf having been first had and obtained, complainants file this their second amended bill of complaint in the above-entitled cause, and state as follows:

"COMPLAINANT'S EXHIBIT NO. 1.
Attached to Original Bill.



No. 1730
G. B. Sturtevant vs. J. F. Dyer. } B. 3

"Complainant's Exhibit No. 1."

First. That they are all citizens of the United States, and all reside in the District of Columbia, except the said John T. Dyer, who is a resident of Norristown, State of Pennsylvania, and all sue in their own right.

Second. Complainants further state that all of the defendants are citizens of the United States and residents of the District of Columbia. The defendants John D. Croissant and John O.
5 Johnson are sued as trustees under a certain deed in trust, hereinafter set out; the defendants Henrietta Stuart, and George B. Starkweather are sued in their own right; the defendant S. Herbert Giesy is sued as the assignee or trustee of certain syndicate certificates now owned by the defendant John O. Johnson, as hereinafter set out; the defendants Yerkes and Baker are also sued as the holders of certain syndicate certificates owned by the defendant George B. Starkweather, as hereinafter set out; the defendants Hannah Campbell, Emma McWilliams, formerly Campbell, wife of Bernard McWilliams, Anna May Campbell, James N. Campbell, William J. Campbell, Benedict F. Campbell, Hannah May Campbell and Joseph D. Campbell, are sued as the widow and devisees and sole heirs-at-law of the late Robert G. Campbell, deceased. The defendant Joseph D. Campbell is an infant of tender years, to wit, of the age of seventeen years.

Third: Complainants aver that on or about May 2d, 1892, the defendant George B. Starkweather entered into a contract in writing with the defendants John D. Croissant and John O. Johnson, whereby the said Starkweather agreed to sell unto the said Croissant and Johnson, 400,000 square feet of ground; situate at the junction of Fourteenth Street and Spring Street, Mount Pleasant, in the County of Washington, District of Columbia, the said Starkweather to have the privilege of removing all buildings from said premises within the period of thirty days, upon written notice from the said trustees so to do. He agreed to deliver all ground in the original tract owned by said Starkweather; all the Spring Street property owned by him; also all the Spring Street front, then owned
6 by colored people; the title to be good or money refunded. The price of the tract was to be $75,000; with privilege reserved by said Starkweather of subscribing for an amount up to fourteen shares of $2500 each, whenever a syndicate should be organized; balance not subscribed by the said Starkweather to be applied to the liquidation of trusts then upon said property as shown by the abstract; in the event these trusts should be found to exceed the balance due to him, the said Starkweather, he agrees to surrender to the said trustees, the said Croissant and Johnson, such an amount of his said subscription as may be found necessary to cover and remove these trusts. Said agreement contained other provisions not necessary to be here set out. Subsequently, to wit, on May 27th, 1892, said agreement was modified in manner following, to wit:— the total cost of said property, including that held by certain colored people was to be $75.000; said George B. Starkweather was to obtain the titles to said portions of said tract held by said colored people by June 1, 1892; and in the event he failed to obtain them

by that date, then the said Croissant and Johnson, trustees, were authorized to purchase the same at the lowest possible price, not to exceed however 34 cents per square foot; a deed of all the property then owned by said Starkweather, known as the Crescent Heights property was to be executed and delivered unto the said Croissant and Johnson trustees. The said agreement formally ratified also the said agreement of May 2d, 1892. Said modification also provided that a certain bond lien for $10,000 was to be left to the said Starkweather to settle; that $10,000 cash was to be paid to him as soon as the deed of seven acres, part of said tract, should be
7 executed and delivered by him, the said Starkweather. Complainants further aver that contemporaneously with the contract for the purchase of this property, the said John D. Croissant and John O. Johnson entered into a contract in writing with the complainants E. Southard Parker, William E. Barker, Ellis Spear, Albert C. Peale, John T. Dyer and Herbert W. T. Jenner, and the defendants Henrietta Stuart, George B. Starkweather, one Robert G. Campbell, now deceased, and others, for the formation of a syndicate, for the purchase of the hereinbefore described property, upon the terms and provisions hereinbefore set out; with the further understanding and agreement that the said Croissant and Johnson were to be the trustees for said syndicate, with full power to manage and sell said property, for which they were to have a certain compensation therein agreed upon; the profits derived from the sale of said property were to be divided among the shareholders of said syndicate, in proportion to their respective rights and interests. The real estate so to be acquired was to be divided into thirty equal shares which were to be represented by syndicate certificates, to be issued by said Croissant and Johnson trustees, as hereinafter set out. That pursuant to said contracts for the purchase of said real estate, the said George B. Starkweather and wife, by deed dated June 1, 1892, conveyed unto the said defendants Croissant and Johnson, all of those certain pieces and parcels of land being a portion of that intended to be purchased by said syndicate, as aforesaid, and to be embraced in said agreement, hereinbefore referred to, more particularly described as follows:—Part of Padsworth
8 and Pleasant Plains, situate in the County of Washington, District of Columbia, beginning at a large stone to the north of the Piney Branch Bridge, on the Fourteenth Street Road, which stone is also the beginning of the first line of Argyle, etc; thence north 61½° E. 196 feet along the line of the York Estate; thence north 54° East 359 feet, along said line to the north east corner of the herein described tract; then south 52½° East 290.40 feet to a stone; thence south 32½° East 300.30 feet to an oak tree; thence south 18¾° East 174.90 feet to what was the northwest corner, to a stone of William E. Holmead's boundary; thence north 66¼° west 36.50 feet; thence north 89° west 355 feet; thence south 84° west 227.75 feet; thence south 80¼° west 181.50 feet to a stone; thence north 19° west 263 feet along the Capt. Hall line to a stone; thence south 63° west with the Hall line along a wagon road 133 feet; thence south 15° west 56 feet to east side of the Fourteenth

Street Road; thence north 28° west with said road, 205 feet to a point beyond Piney Branch Bridge; thence north 76½° east 79.20 feet to beginning; containing seven acres, more or less; and also all that piece of land adjoining the same, known as lot one (1) of the Holmead tract, bordering on the north and west line of Spring Street, and lying adjacent to the south and east line of the Lewis land, and south of the land of W. J. Rhees.

Said deed was made in and upon the following trusts, *inter alia,* to wit:—to hold the same for the benefit of such persons as contributed to the purchase of said real estate, according to their respective contributions, as tenants in common, with power in said trus-
9 tees, to sell, lease or mortgage, or to convey in fee simple, in their discretion; as will more fully appear by reference made to said deed, which is recorded in liber 1724, folio 112, of the Land Records of said District. The original of which said deed is filed herewith, marked "Complainants' Exhibit No. 1," and prayed to be read and considered as part hereof.

Said real estate was at the time of said conveyance to Johnson and Croissant, as aforesaid, encumbered by a certain deed of trust made by the said George B. Starkweather and wife, bearing date January 29th, 1889, and recorded in Liber 1365, folio 248, one of the land records of said District, to secure a certain indebtedness therein set out; all of which will more fully and at large appear by reference had to a duly certified copy of said deed of trust, which is filed herewith and marked "Complainants' Exhibit No. 2." Default having been made in the payment of said indebtedness by the said George B. Starkweather, the trustees under said trust, A. B. Duvall and C. C. Cole, pursuant to the powers vested in them by the same, sold said property at public auction; at which sale the said Herbert W. T. Jenner became and was the purchaser; he fully complied with the terms of said sale, and by deed bearing date on or about February 3d, 1898, the said trustees conveyed said real estate unto the said Herbert W. T. Jenner, as trustee, the trusts not being declared, which deed was duly recorded in Liber 2294, folio 167, one of the land records of said District; which said deed is filed herewith, marked "Complainants' Exhibit No. 3," and is prayed to be read and considered as part hereof. Thereby the rights of the said syndicate in and to the part of the said Crescent Heights property, so sold as aforesaid, became and were extinguished.

10 Complainants further aver that pursuant to said contracts of purchase, the said Starkweather and wife, did by deed bearing date May 2, 1892, and recorded in Liber 1698, folio 412, of the land records of said District, convey unto the said Johnson and Croissant, trustees, the following described pieces and parcels of real estate, situate in the County of Washington, District of Columbia, to wit:—lots numbered one (1) to forty-four (44) inclusive, in J. C. Lewis' subdivision of Pleasant Plains, situate on the north side of Spring Street, at the point of union with Fourteenth Street extended, excepting, nevertheless, parts already deeded in fee to others; a duly certified copy of this deed is filed herewith, marked "Complainants' Exhibit No. 4," and prayed to be read and considered as part hereof.

The plat referred to in this deed was never recorded in the Surveyor's office of the District of Columbia, but subsequently the said Lewis subdivided the portion of said tract which fronts on Spring Road, into twenty-four lots, which subdivision is recorded in liber county No. 6, folio 113, of the Surveyor's office of said District, a copy of which said plat is filed with complainants' original bill, marked "Complainants' Exhibit No. 1," and is prayed to be considered in connection herewith. A more accurate description of the property intended to be conveyed by said deed is as follows: to-wit, Beginning at a point at the north west corner of said lot one (1) in Pleasant Plains; thence south 66¼° east to north line of Spring Street; thence with said north line of Spring Street, as laid down on plat recorded in the Surveyor's office of the District of Columbia, in County Book 6, page 113, to the east line of land con-
11 veyed to Hall by deed recorded among the land records in liber 618, folio 368, thence with said Hall's east line, north 19° west 155 feet; thence north 80¼° east 181.50 feet; thence north 84° east 227.75 feet; thence south 89° east 255 feet; thence south 66¼° east 36.50 feet to the place of beginning; excepting nevertheless, such parts of said tract as had already been conveyed to said Starkweather. Said real estate was to be held in and upon the same trusts as those declared and set out in the deed from Starkweather and wife to said grantees, recorded in liber 1724, folio 112, hereinbefore referred to; but said trusts were not set out or declared in said deed.

The said Starkweather having failed to acquire and purchase title to the lots conveyed by him to certain colored people, as specified in the contract of purchase hereinbefore set out, complainants aver further that the said Johnson and Croissant, as trustees, as aforesaid, did, pursuant to said understanding and agreement, purchase certain of said lots that had been conveyed by the said Starkweather, as aforesaid, to wit:—from Lewis Mason and wife, by deed dated June 17, 1892, and recorded in liber 1698, folio 414, 1674 square feet, more or less; from Charles Shorter and wife, by deed dated June 24, 1892, and recorded in liber 1698, folio 416, 1650 square feet, more or less; and from Albert Lewis and wife, by deed dated June 28, 1892, and recorded in liber 1687, folio 339, 2200 square feet more or less; reference being hereby made to said deeds for a particular description of the real estate conveyed thereby. Said deeds are filed herewith, marked "Complainants' Exhibits, Nos. 5, 6 and 7, and are prayed to be read and considered in connection herewith.

12 Said real estate at the time of the conveyance by the said Starkweather, as aforesaid, was encumbered by a deed of trust, made by himself and wife, dated April 29, 1890, and recorded in liber 1488, folio 161, of the land records of said District, in which Mahlon Ashford and George W. Stickney were trustees; a duly certified copy of which deed of trust is filed herewith, marked "Complainants' Exhibit No. 8," and prayed to be read and considered as part hereof. Default having been made by the said Starkweather in the payment of the indebtedness secured by said trust, the said trustees, in pursuance of the powers conferred upon them thereby,

sold the hereinbefore described property, at public auction, unto the said Croissant and Johnson, trustees, and conveyed the same to them by deed dated July 20, 1892, and recorded in liber 1714, folio 137 of said land records, upon like trusts as those hereinbefore set out and declared in the conveyances by the said Starkweather to them, as aforesaid. A duly certified copy of said deed is filed herewith, marked "Complainants' Exhibit No. 9," and is prayed to be read and considered as part hereof.

Fourth. Complainants further aver that the said defendants Croissant and Johnson, as trustees, as aforesaid, did contemporaneously with or shortly after the formation of said syndicate, and the purchase of said property, issue certain syndicate certificates to the parties having the beneficial interest in said property, the terms of which were in substance as follows:—that they the said Croissant and Johnson as trustees, as joint tenants in fee, under certain deeds from Starkweather and wife, of record in the land records of
13 said District of Columbia, held certain real estate, situate in said District, known as the Crescent Heights, at the junction of Fourteenth Street, extended, and Spring Street, Mount Pleasant, in said District, containing about 400,000 feet of ground; that whereas "A. B." has contributed $2500 of the sum expended for the purchase of said real estate, and is therefore entitled to a one-thirtieth undivided interest in said real estate; in consideration of the premises, and of said payment, the receipt whereof from the said "A. B. is hereby acknowledged, the said Croissant and Johnson, trustees, declare that they hold said real estate, in trust, as follows:—for the said "A. B." his heirs and assigns to the extent of a one-thirtieth interest, that is to say in and upon the trusts set forth in said deed. By the terms of said certificate it was further understood and agreed as follows:—

1st. That an allowance therein specified, should be paid to the trustees as compensation for their services.

2nd. That the certificate, and the interest thereby represented should be at all times subject to assessment for its pro rata part of the money necessary to pay the expenses of the execution of said trust, as provided in the deed to said trustees; which assessment shall be paid within thirty days after such notice shall be sent postpaid to the holder of said certificate, or personally served upon him; and in default of such payment, that the said trustees, or the survivor of them shall be authorized to sell the interest of such person, so in default, either at public or private sale, after such notice and upon such terms as they or the survivor of them shall deem best, and to transfer such interest to the purchaser, without liability on his part, to
14 see to the application of the purchase money; said purchase money to be applied first, to the payment of the assessment in default, with interest at six per cent. from the date of notice until paid, the balance to be paid over to such owner, or his heirs or assigns.

3rd. The interest represented by said certificate may be transferred in writing, under seal, and upon such transfer, the assigned declaration shall be surrendered to the trustees, and a new declaration

issued in the name of the purchaser, and the trustees shall not be obliged to recognize the rights of any such transferee, who fails to surrender the purchased certificate, and procure a new one in his own name.

Fourth. The transferee of the interest represented by this certificate, shall be subrogated to all the rights, and subjected to all the liabilities of the original holder; and the said "A. B." as evidence of his acceptance of said declaration, and in order to give all necessary power to said trustees, or the survivor of them, has subscribed said instrument of writing, and set his seal thereto. On the back of said certificates is a blank form of transfer.

Of these syndicate certificates, twenty-four only were issued, instead of thirty as originally intended; the remaining six shares were not subscribed for, and have never been issued by the said trustees. Of these twenty-four shares, four are *own* owned and held by the said George B. Starkweather, subject, nevertheless, to the lien or claim thereon of the said defendants Yerkes and Baker, to whom the said Starkweather assigned them in blank, to secure a
15 certain indebtedness, the amount of which is unknown to complainants, due as they are informed and believe and therefore state, from the said Starkweather to them; and the said certificates are now in the actual custody of said Yerkes and Baker. Eight of said shares are owned and held by the complainant, H. W. T. Jenner; two are owned and held by the complainant John T. Dyer; two are owned and held by the defendant John O. Johnson; the complainants Ellis Spear, E. Southard Parker, William E. Barker and Albert C. Peale, and the defendant Henrietta Stuart, each own one share, and one Robert G. Campbell, now deceased, had three shares, making a total of twenty-four shares. Complainants further aver that heretofore, to wit, on October 15th, 1902, the said Robert G. Campbell died testate, leaving him surviving, the said Hannah Campbell, his widow, and the defendants Anna May Campbell, James N. Campbell, William J. Campbell, Benedict F. Campbell, Hannah May Campbell, Joseph D. Campbell and Emma McWilliams, as his only children and heirs-at-law. All of said defendants are devisees under the will of said Campbell, and are entitled to the interest in said real estate, represented by said shares, either as devisees under said will, or as his widow and heirs at law. The certificates issued to and standing in the name of John O. Johnson, were assigned in blank, by him, and delivered to and are held by the defendant Giesy, to secure the payment of an assessment made by the said defendants Croissant and Johnson.

Fifth. That thereafter, to wit, on January 30, 1898, the said syndicate was indebted to numerous persons, in a certain
16 large sum of money, to wit, in the sum of $3648.26; that this indebtedness was incurred on account of taxes accruing due from time to time on said property, and on account of interest paid on trusts, and other expenses incurred in the administration of said trust; and being so indebted, as aforesaid, the said Croissant and Johnson, as trustees, assuming to act upon the powers conferred upon them by said deed in trust, and by virtue of the syndi-

cate certificates, issued the shareholders of said syndicate, as hereinbefore set out, did on the day and date aforesaid, execute and deliver unto the persons to whom said sums of money were due and owing, their promissory notes to secure said indebtedness, in manner following, to wit:—unto the said Ellis Spear, their certain promissory note payable to him order, for the sum of $2378.79; and unto the said Herbert W. T. Jenner, two certain promissory notes payable to his order, one for the sum of $535.35, and the other for the sum of $180; and unto one Henry J. Gross, their certain promissory note payable to his order, for the sum of $554.12; who assigned said note, in due course of business, unto the complainant Brainard H. Warner; all of said notes were payable in one year after date thereof, with interest at the rate of six per cent. per annum. Said notes were not paid at maturity, nor have any part of them yet been paid, and the same are now long overdue.

Sixth. Complainants aver that the trustees of said syndicate, the said Croissant and Johnson, have never made a statement of account to the syndicate certificate holders, from the organization of said syndicate to the present time; and complainants do not know,
and are unable to state, how much money has been received
17 by said defendant trustees, and what amounts have been
disbursed by them, and how. To make such an accounting the said trustees have hitherto failed and refused to do, though often requested, and still fail and refuse so to do. Complainants are informed and believe, and therefore state that they are entitled to an accounting from said trustees, under the decree of this court. The property is being wasted by the accumulation of taxes against it, and it has been sold from time to time, for default in the payment of taxes, and the rights and interests of the parties beneficially interested therein have become thereby inperilled. That it is to the interest and advantage of all of the shareholders in said syndicate, that the residue of the real estate, standing in the name of said Croissant and Johnson, trustees, as aforesaid, should be sold, the syndicate debts paid, and any surplus remaining distributed among the shareholders, in accordance with their respective rights and interests.

Complainants being without remedy at law, therefore bring this suit in equity, and pray as follows:

Prayers.

First. That the United States writ of subpœna may issue, addressed to said defendants, commanding them to appear and answer the exigency of this bill; but not under oath, an answer under oath being hereby expressly waived.

Second. That the defendants John D. Croissant and John O. Johnson, as trustees, as aforesaid, be required to account, under the direction of the court, for all the moneys received, by them, since the formation of said syndicate, to the time of such accounting,
how disbursed, and on what account; and that they may be
18 required to disclose what debts are due and owing to the
said syndicate, on what account, and to whom.

Third. That a decree may be passed directing said property to be sold, and appointing a trustee or trustees to make such sale, for the purpose of winding up the affairs of the syndicate, under the direction and supervision of the court. That all necessary accounts may be taken; that the proceeds derived from such sale or sales be applied, after the payment of the costs and expenses of this suit, in the payment of the debts due and owing by said syndicate; and the residue if any there be, be distributed among the shareholders, in accordance with their respective rights and interests.

Fourth. That complainants may have such other and further relief as the nature of the case may require.

HERBERT W. T. JENNER,
E. SOUTHARD PARKER,
BRAINARD H. WARNER,
ELLIS SPEAR,
JOHN T. DYER,
WILLIAM E. BARKER,
ALBERT G. PEALE,
By B. F. LEIGHTON,
Their Solicitor.

The defendants to this bill are those named as such in the caption hereof.

B. F. LEIGHTON,
Solicitor for Complainants.

19 DISTRICT OF COLUMBIA, *To wit:*

We, Herbert W. T. Jenner, E. Southard Parker, Ellis Spear and Brainard H. Warner, being first duly sworn, on oath say that we have read the foregoing bill by us subscribed, and know the contents thereof; that the facts therein stated of our own knowledge are true, and those stated upon information and belief, we believe to be true.

HERBERT W. T. JENNER.
E. SOUTHARD PARKER.
BRAINARD H. WARNER.
ELLIS SPEAR.

Subscribed and sworn to before me, this 29″ day of June, A. D., 1903.

C. CLINTON JAMES,
[SEAL.] *Notary Public.*

20 COMPLAINANTS' EXHIBIT No. 1.

Filed June 29, 1903.

This indenture, made this first day of June, A. D. 1892, witnesseth, that George B. Starkweather and Emma L. Starkweather, his wife, of the District of Columbia parties hereto of the first part,

for and in consideration of Fifty-six thousand two hundred and fifty ($56,250.) dollars in current money of the United States, to them paid by John D. Croissant and John O. Johnson, of the same place parties hereto of the second part, receipt of which, at the delivery hereof, is hereby acknowledged have bargained and sold, granted, enfeoffed and conveyed, and do hereby bargain and sell, grant, enfeoff and convey unto and to the use of the said John D. Croissant and John O. Johnson their heirs and assigns and the survivor of them, his heirs and assigns the following described land and premises, with the improvements, ways, easements and appurtenances thereto belonging, situate and lying in the District of Columbia, to wit parts of tracts known as Padsworth and Pleasant Plains containing seven (7) acres more or less, and being the same property conveyed to said George B. Starkweather by deeds recorded in Liber 1172 folio 398 and Liber 1193 folio 272 of the land records of the District of Columbia. Also all that portion of lot One of Holmead's part of Pleasant Plains as conveyed by William Holmead to V. C. Lewis by deed of the 14″ day of July 1886; the land hereby intended to be conveyed being also described in a certain deed of trust recorded in Liber 1365 folio 248 of the said land records.

21 To have and to hold the said land and premises, with the improvements, ways, easements, and appurtenances unto and to the use of the said John D. Croissant and John O. Johnson, their heirs and assigns and the survivor of them, his heirs and assigns, in and upon the uses and trusts following, that is to say: In trust for the sole use and benefit of the persons, who have contributed to the purchase of said described land and their heirs and assigns, as tenants in common in the shares and proportions in which they have respectively contributed, with full power and authority in them the said parties hereto of the second part or the survivor of them, or the heirs of the survivor from time to time and at all times the same or any and every part thereof, to manage, control, let, lease, sell or mortgage, and the rents, issues and profits thereof to collect and receipt for, and the same and every part thereof, from time to time and at all times, to convey to such person or persons, to such uses and in such quantity and quality of estate or estates, whether in fee simple absolute, or by way of trust or mortgage or for any less estate as the said parties hereto of the second part or the survivor of them or his heirs shall in their or his discretion deem most for the interest and advantage of all parties concerned, without any liability or accountability, of any tenant, purchaser or purchasers, mortgagee or mortgagees or person or persons loaning money to see to the application of any money or monies paid or advanced to the said parties of the second part or the survivor of them, on account of said real estate or any part thereof.

22 And the said George B. Starkweather hereby covenants with the said parties hereto of the second part their heirs and assigns and the survivor of them his heirs and assigns to forever warrant and defend the title to said granted premises unto the said parties hereto of the second part their heirs and assigns and the survivor of them his heirs and assigns, from and against all per-

sons claiming the same or any part thereof, by, through or under the said parties hereto of the first part or either of them and, at the cost of the person requesting the same, to execute and deliver any other or further deed or deeds, deemed by legal counsel necessary to more fully assure the title to said granted premises unto the said party hereto of the second part, their heirs and assigns and the survivor of them his heirs and assigns.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER. [SEAL.]
EMMA L. STARKWEATHER. [SEAL.]

Signed, sealed and delivered in the presence of
CHARLES WALTER.

DISTRICT OF COLUMBIA, *to wit:*

I, Charles Walter, a Notary Public, in and for said District hereby certify that George B. Starkweather and Emma L. Starkweather wife of the said George B. Starkweather the grantors in and who are personally well known to me as the persons who executed the aforegoing and annexed Deed dated the first day of June, A. D. 1892, personally appeared before me, in the District aforesaid, and acknowledged said Deed to be their act and deed.

23 And the said Emma L. Starkweather, wife of the said George B. Starkweather being by me examined privily and apart from her said husband, and having the Deed aforesaid fully explained to her by me acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal, this first day of June, A. D. 1892.

CHARLES WALTER,
Notary Public, D. C.

[SEAL.]

Endorsed.

Received for record on the 4 day of August, A. D. 1892, at 3.20 o'clock p. m., and recorded in Liber No. 1724 at folio 112 *et seq.* one of the Land Records for the District of Columbia, and examined by

B. K. BRUCE, *Recorder.*

24 COMPLAINANTS' EXHIBIT No. 2.

Liber 1365, Folio 248 *et seq.*

Trust. Recorded January 29, 1889, 12-03 P. M.

George B. Starkweather *et ux.*
to
Duvall and Cole.

This indenture made this Twenty-ninth day of January in the year of our Lord one thousand eight hundred and eighty-nine between George B. Starkweather and Emma L. Starkweather his wife of the District of Columbia, parties of the first part, and Andrew B. Duvall and Charles C. Cole of the same place, parties of the second part: Whereas the said George B. Starkweather is justly indebted unto Andrew C. Bradley, trustee, in the full sum of Seven Thousand Five Hundred and Fifty-three 34/100 Dollars ($7553.34) for which amount he has passed unto the said Andrew C. Bradley, Trustee, his promissory note bearing even date with these presents, payable four years after date with interest at six (6) per centum per annum payable semi-annually, with the privilege of payment at any time before maturity provided that all interest upon said note to its maturity or to six months beyond such payment be paid. And whereas the parties of the first part, desire to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon: Now therefore this indenture witnesseth, That the parties of the first part in consideration of the premises, and of one dollar lawful money to them in hand paid by the parties of the second part, the receipt of which before the sealing and delivery of these presents is hereby acknowledged have given, granted, bargained and sold,
25 aliened, enfeoffed, released and conveyed, and do by these presents, give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part their heirs and assigns the following described land and premises, situate in the District of Columbia, and designated as Part of Padsworth and of Pleasant Plains tracts, beginning for the same at a large stone to the North of Piney Branch Bridge on the Fourteenth Street road, which stone is also the beginning of the first line of Argyle &c: thence North sixty-one and one-half (61½) degrees East one hundred and ninety-eight (198) feet along the line of the York Estate; thence North fifty-four (54) degrees East, three hundred and fifty-nine (359) feet along said line to the North East corner of the herein described tract; thence South fifty-two and one half (52½) degrees East two hundred and ninety 40/100 (290 40/100) feet to a stone; thence South thirty three and one half (33½) degrees East three hundred 30/100 feet (300 30/100) to an Oak tree; thence South eighteen and three fourths (18¾) degrees East

one hundred and seventy-four 90/100 feet (174 90/100) to what was the North West corner stone of William Holmead's Boundary; thence North sixty-six and one fourth (66¼) degrees West thirty-six 50/100 feet (36 50/100); thence North Eighty-nine (89) degrees West two hundred and fifty-five (255) feet; thence South eighty-four (84) degrees West two Hundred and twenty-seven 75/100 feet (227 75/100); thence South eighty and one fourth (80¼) degrees West one hundred and eighty-one 50/100 feet (181 50/100) to a stone; thence North nineteen (19) degrees West two hundred and sixty three (263) feet along the Capt. Hall line to a stone; thence South Sixty-three (63) degrees West with the Hall line along a wagon road, one hundred and thirteen (113) feet; thence
26 South fifteen (15) degrees West fifty-six (56) feet to the East side of the Fourteenth Street Road; thence North twenty-eight (28) degrees, West with said road two hundred and five (205) feet to a point beyond Piney Branch Bridge thence North seventy-six and one-half (76½) degrees East seventy-nine 20/100 feet (79 20/100) to the beginning, containing about seven acres and being the same land conveyed unto the said George B. Starkweather by deeds recorded among the land records of the District of Columbia, in Liber No. 1172, folio 398 and in Liber No. 1193 folio 272. Also that piece or parcel of land adjoining the same known as lot numbered One (1) of the Holmead tract bordering on the North and West line of Spring street and lying adjacent to the South and East lines of the Lewis land and South of the land of W. J. Rhees which was transferred from William Holmead to Virginia C. Lewis, and recorded the deed thereof July 14, 1886. Together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining and all the estate, right, title, interest and claim either at law or in equity or otherwise however, of the parties of the first part, of, in to, or out of the said land and premises. To have and to hold the said land and premises and appurtenances, unto and to the only use of the parties of the second part, their heirs and assigns, in and upon the trusts, nevertheless, hereinafter declared, that is. In trust to permit said George B. Starkweather his heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof, to take, have and apply to and for his and their sole use and benefit, until default be made in the payment of the debt hereby secured or any instalment of principal or interest thereon, when and as the
27 same shall become due and payable, or any proper cost, charge, commission or expense, in and about the same. And upon full payment of all of said debt, and the interest thereon, and all other proper costs, charges, commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said George B. Starkweather his heirs or assigns at his or their cost. And upon this further trust, upon any default or failure being made in the payment of the said debt or of any installment of, principal or interest

thereon; when and as the same shall become due and payable, or any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter, to sell the said described land and premises at public auction, upon such terms and conditions at such time and place and after such previous public advertisement as the parties of the second part or the survivor of them, or his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales. Firstly, to pay all proper costs, charges, and expenses, including all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales. Secondly, to pay whatever may then remain unpaid of the said debt and the interest thereon, whether same shall be due or not; and Lastly, to pay the remainder of said proceeds if any there be, to said George B. Stark-
28 weather his heirs executors, administrators or assigns. And the said George B. Starkweather doth hereby agree at his own cost during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled to pay all taxes and assessments, both general and special, that may become due on or be assessed against said land and premises during the continuance of this trust, and that upon any default or neglect to pay taxes and assessments, any party secured hereby may pay said taxes and assessments, and the expense thereof, shall be a charge hereby secured and bear interest at the rate of ten per centum per annum until paid. In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER. [SEAL.]
EMMA L. STARKWEATHER. [SEAL.]

Signed, sealed and delivered in the presence of—
CHARLES WALTER.

DISTRICT OF COLUMBIA, *To wit:*

I, Charles Walter, a Notary Public, in and for the said District do hereby certify that George B. Starkweather and Emma L. Starkweather his wife parties to a certain Deed bearing date on the twenty-ninth day of January, A. D. 1889, and hereto annexed, personally appeared before me in said District the said George B. Starkweather and Emma L. Starkweather his wife, being personally well known to me to be the persons who executed the said Deed, and acknowledged the same to be their act and deed; and the said Emma L. Starkweather being by me examined privily and apart from her husband and having the Deed aforesaid fully ex-
29 plained to her acknowledged the same to be her act and deed and declared that she willingly signed sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this Twenty-ninth day of January, A. D. 1889.

CHARLES WALTER,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *June* 1, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1365 fol. 248 *et seq.* one of the Land-Records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

[SEAL.]

COMPLAINANTS' EXHIBIT No. 3.

This indenture, made this Third day of February, in the year of our Lord one thousand eight hundred and ninety-eight, by and between Andrew B. Duvall and Charles C. Cole, Trustees, parties of the first part, and Herbert W. T. Jenner, Trustee, party of the second part:

Whereas, George B. Starkweather and wife heretofore made and executed a certain Deed of Trust, bearing date on the 29th day of January, A. D. 1889, and thereby conveyed the hereinafter described land and premises and appurtenances unto said Andrew B. Duvall and Charles C. Cole, in trust to secure the payment of a certain debt therein fully set forth; and upon default in the payment thereof, to sell the said land and premises and appurtenances at public auction, and out of the proceeds to pay the said debt, and to convey the said land and premises and appurtenances unto the purchaser thereof; all of which will more fully and at large appear upon reference to said Deed of Trust, duly recorded in Liber Number 1365, folio 248, of the Land Records of the District of Columbia.

And whereas, default having been made in the payment of said debt, the parties of the first part, trustees as aforesaid, in execution of the trusts declared in said Deed and by direction of the party thereby secured, after due public advertisement, proceeded to make sale of said land and premises and appurtenances; and in front of said premises, on the 3d day of February, A. D. 1898, at 4 o'clock P. M., being the time and place advertised, did sell the same at public auction unto Herbert W. T. Jenner, Trustee, who, as the highest and best bidder therefor, became the purchaser thereof at and for the sum of Seventeen thousand one hundred ($17,100.00) Dollars; and whereas the said party of the second part hath fully complied with the terms of said sale and is entitled to this conveyance:

Now, therefore, this indenture witnesseth, that the parties of the first part, as trustees as aforesaid, in consideration of the premises and of the purchase money aforesaid to them in hand paid by the party of the second part, in lawful money, receipt of which before the sealing and delivery of these presents, is hereby acknowledged, have

granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto the party of the second part, his heirs and assigns forever, the following described land and
31 premises, situate, lying and being in the District of Columbia and distinguished as and being all that certain piece or parcel of land, known and designated as part of "Padsworth" and of "Pleasant Plains" tracts, beginning for the same at a large stone to the north of Piney Branch bridge, on the 14th street road, which stone is also the beginning of the first line of "Argyle" etc; thence north sixty-one and a half (61½) degrees east one hundred and ninety-eight (198) feet along the line of the York Estate; thence north fifty-four degrees (54), east three hundred and fifty-nine (359) feet along said line to the north-east corner of the herein described tract; thence south fifty-two and one half (52½) degrees east two hundred and ninety and forty hundredths (290.40) feet to a stone; thence south thirty-three and one half (33½) degrees east three hundred and thirty hundredths (300.30) feet to an oak tree; thence south eighteen and three fourths (18¾) degrees east one hundred and seventy-four and ninety-hundredths (174.90) feet to what was the northwest corner stone of William Holmead's boundary; thence north sixty-six and one fourth (66¼) degrees west thirty six and fifty-hundredths (36.50) feet; thence north eighty-nine (89) degrees west two hundred and fifty-five feet (255); thence south eighty-four (84) degrees west two hundred and twenty-seven and seventy-five hundredths (227.75) feet; thence south eighty and one fourth (80¼) degrees west one hundred and eighty-one and fifty-hundredths (181.50) feet to a stone; thence north nineteen (19) degrees west two hundred and sixty-three (263) feet along the Capt. Hall line to a stone; thence south sixty-three (63) degrees west with the Hall line along a wagon road one hundred and
32 thirteen (113) feet; thence south fifteen (15) degrees west fifty-six (56) feet to the east side of the 14th street road; thence north twenty-eight degrees (28) west with said road two hundred and five (205) feet to a point beyond Piney Branch bridge; thence north seventy-six and one half (76½) degrees east seventy-nine and twenty hundredths (79.20) feet to the beginning, containing about seven (7) acres, being the same land conveyed to George B. Starkweather, in Liber 1172, folio 398, and 1193, folio 272, and also all that piece or parcel of land adjoining the same, known as lot numbered one (1), of the Holmead tract, bordering on the north and west line of Spring Street and lying adjacent to the south and east lines of the Lewis land and south of the land of W. J. Rhees which was transferred from Wm. Holmead to Virginia C. Lewis, and recorded by deed thereof July 14, 1886, together with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the right, title, interest and estate, legal, equitable and otherwise, of the parties of the first part, trustees as aforesaid, in and to the same.

To have and to hold the said land and premises and appurtenances,

unto, and to the sole use of the party of the second part, his heirs and assigns forever.

In testimony whereof, the parties of the first part, as trustees as aforesaid, have hereunto set their hands and seals on the day and year first above written.

ANDREW B. DUVALL, *Trustee.* [SEAL.]
CHARLES C. COLE, *Trustee.* [SEAL.]

Signed, sealed and delivered in the presence of
A. LEFTWICH SINCLAIR.

33 DISTRICT OF COLUMBIA, *sct.:*

I, A. Leftwich Sinclair, a Notary Public in and for the said District do hereby certify that Andrew B. Duvall and Charles C. Cole, Trustees, parties to a certain Deed bearing date on the Third day of February, A. D. 1898, and hereto annexed, personally appeared before me in said District the said Andrew B. Duvall and Charles C. Cole being personally well known to me to be the persons who executed the said Deed, and acknowledged the same to be their act and deed.

Given under my hand and official seal this Twelfth day of February, A. D. 1898.

A. LEFTWICH SINCLAIR,
[SEAL.] *Notary Public, D. C.*

(Endorsed.)

Received for record 12.09 P. M. February 12, 1898 and recorded in Liber 2294 folio 167 *et seq.* Land-Records of the District of Columbia.

H. P. CHEATHAM, *Recorder.*

34 COMPLAINANTS' EXHIBIT No. 4.

EXHIBIT S. H. G. No. 2.

Liber No. 1698, Folio 412 *et seq.*

Recorded July 19, 1892, 1:04 p. m. Deed.

Geo. B. Starkweather *et ux.*
to
Croissant and Johnson, Tr's.

This indenture, made this 2nd day of May in the year of our Lord one thousand eight hundred and ninety-two, by and between George B. Starkweather and Emma L. Starkweather, his wife, both of the District of Columbia parties of the first part and John D. Croissant and John O. Johnson also of the District of Columbia, parties of the

second part: Witnesseth, that the said parties of the first part, for and in consideration of Ten Dollars, lawful money to them in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents, give, grant bargain and sell, alien, enfeoff, release, convey and confirm unto the parties of the second part their heirs and assigns forever, the following described land and premises, situate, lying and being in the District of Columbia and distinguished as all those pieces or parcels of ground designated as lots one (1) to forty-four (44) both inclusive of J. C. Lewis' subdivision of Pleasant Plains, situate on the North of Spring St. at a point of union with 14th St. extended, except the pieces or portions already deeded in fee to others; together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim either at law or in
35 equity, or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises: To have and to hold the said land and premises and appurtenances unto and to the only use of the parties of the second part, their heirs and assigns forever. And the said George B. Starkweather for himself, his heirs, executors and administrators do hereby covenant and agree to and with the parties of the second part, their heirs and assigns, that they the parties of the first part and their heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the parties of the second part, their heirs and assigns or any part thereof, or interest therein, by, from, under and through. And further, that the parties of the first part and their heirs shall and will at any and all times hereafter, upon the request and at the cost of the parties of the second part, their heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the parties of the second part, their heirs or assigns, as the parties of the second part, their heirs or assigns, or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER. [SEAL.]
EMMA L. STARKWEATHER. [SEAL.]

Signed, sealed and delivered in the presence of
ALEX. S. STEWART.

36 DISTRICT OF COLUMBIA, *To wit:*

I, Alex. S. Stewart, a Notary Public, in and for the said District of Columbia, do hereby certify that George B. Starkweather and Emma L. Starkweather, parties to a certain Deed bearing date on

the 2nd day of May, A. D. 1892, and hereto annexed, personally appeared before me in the said District of Columbia, the said George B. Starkweather and Emma L. Starkweather being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed; and the said Emma L. Starkweather being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she willingly signed, sealed and delivered the same and that she wished not to retract it.

Given under my hand and official seal, this 2nd. day of May, A. D. 1892.

[NOTARIAL SEAL.] ALEX. S. STEWART,
Notary Public in and for the District of Columbia.

(I. R. Stamp.)

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *October* 12, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1698 fol. 412 *et seq.* one of the Land-Records of the District of Columbia.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder of Deeds.

37 COMPLAINANTS' EXHIBIT NO. 5.

This indenture, Made this Seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety-two by and between Lewis G. Mason and Eliza A. his wife, of the District of Columbia parties of the first part, and John D. Croissant and John O. Johnson, Trustees, of the same place parties of the second part.

Witnesseth, that the parties of the first part, for and in consideration of two hundred and eight Dollars, lawful money, to them in hand paid by the parties of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have conveyed, remised, released and forever quit claimed, and do hereby convey, remise, release and forever quit claim unto the parties of the second part their heirs and assigns the following described land and premises, situate, lying and being in the District of Columbia, and distinguished as parts of Lots in J. C. Lewis' subdivision of part of "Pleasant Plains" as per plat recorded in County number 6 folio 113 of the Records of the Office of the Surveyor of the District of Columbia, beginning at a stake on the North side of Spring Street in front of Lot numbered seventeen (17) Thirty-nine and eighty-eight, one hundredths (39 88/100) feet North Easterly from the stone between Lots Fifteen (15) and Sixteen (16) thence North nine (9) degrees West, Fifty and eight one hundredths (50 8/100) feet to a stake, thence North Sixty-eight (68) degrees, ten (10)

minutes East, Thirty one and two one hundredths (31 2/100)
38 feet to a stake, thence South Thirteen (13) degrees and fifteen (15) minutes East, Fifty and four one-hundredths (50 4/100) feet to the street line, thence with the said line South Sixty-nine (69) degrees West Thirty-five (35) feet to the point of beginning, containing Sixteen Hundred and Seventy-four (1674) square feet more or less, together with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging, or in any wise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

To have and to hold the above released land and premises unto and to the use of the parties of the second part their heirs and assigns forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

LOUIS G. MASON. [SEAL.]
ELIZA A. MASON. [SEAL.]

Signed, sealed and delivered in the presence of—
RUFUS A. GORHAM.
HENRY C. JACKSON.

STATE OF NEW JERSEY, *County of Bergen, To wit:*

I, Rufus A. Gorham, Notary Public in and for the said State and County do hereby certify that Louis G. Mason and Eliza
39 A. his wife, parties to a certain Deed bearing date on the Seventeenth day of June, A. D. 1892, and hereto annexed, personally appeared before me in said County and State the said Louis G. Mason and Eliza A. Mason being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed; and the said Eliza A. Mason being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this Eighteenth day of June, A. D. 1892.

[SEAL.] RUFUS A. GORHAM,
Notary Public, New Jersey.

STATE OF NEW JERSEY, *Bergen County, ss:*

I, Samuel Taylor, Clerk of the County of Bergen, and also Clerk of the Circuit Court and Court of Common Pleas (Courts of Record), do hereby certify that Rufus A. Gorham Esquire, whose name is subscribed to the certificate of proof of the annexed instrument, and thereon written, was at the time of taking such proof a Notary

Public in and for said County and State, and I verily believe that his signature to the annexed instrument is genuine.

In testimony whereof, I have hereunto set my hand and
40 affixed the seal of said Court and County, the 20″ day of June, A. D. 1892.

[SEAL.] SAML. TAYLOR, *Clerk.*

(Endorsed.)

Received for record on the 19″ day of July, A. D. 1892, at 1.05 o'clock p. m., and recorded in Liber No. 1698 at folio 414 *et seq.*, one of the Land Records for the District of Columbia, and examined by—

B. K. BRUCE, *Recorder.* [SEAL.]

41 COMPLAINANTS' EXHIBIT No. 6.

This indenture, Made this Twenty-fourth day of June in the year of our Lord one thousand eight hundred and ninety-two by and between Charles Shorter and Julia Shorter, his wife of the District of Columbia parties of the first part, and John D. Croissant and John O. Johnson, Trustees of the same place parties of the second part, Witnesseth,

That the parties of the first part, for and in consideration of Eight hundered and fifty Dollars, lawful money, to them in hand paid by the parties of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have conveyed, remised, released and forever quit claimed, and do hereby convey, remise, release and forever quit claim unto the parties of the second part their heirs and assigns the following described land and premises, situate, lying and being in the District of Columbia, and distinguished as all that piece and parcel of land fronting on Spring Street in the District of Columbia, containing Sixteen hundred and fifty (1650) square feet more or less, as described in the agreement of sale, dated August 6th 1888, between George B. Starkweather and Charles Shorter, recorded in Liber 1341 folio 74, of the Records of the office of the Surveyor of the District of Columbia together with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging, or in any wise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the parties of the first
42 part, of, in, to or out of the said land and premises.

To have and to hold the above released land and premises unto and to the use of the parties of the second part their heirs and assigns forever. In and upon the uses and Trusts following that is to say: In Trust for the sole use and benefit of the persons who have contributed to the purchase of said described land, their heirs and assigns, as tenants in common, in the shares and proportions in which they have respectively contributed, with full power and authority in them, the said parties hereto of the second part, or the

survivor of them, or the heirs of the survivor from time to time, and at all times, the same or any and every part thereof, to manage, control, let, lease, sell or mortgage, and the rents, issues and profits thereof to collect and receipt for, and the same, and every part thereof, from time to time, and at all times, to convey to such person or persons, to such uses, and in such quantity and quality of estate or estates, whether in fee simple, absolute or by way of trust or mortgage, or for any less estate as the said parties hereto of the second part, or the survivor of them, shall in their or his discretion, deem most for the interest and advantage of all parties concerned, without any liability or accountability of any tenant, purchaser or purchasers, mortgagee or mortgagees, or person or persons loaning money, to see to the application of any money or moneys paid, or advanced to the said parties of the second part, or the survivor of them, on account of said real estate, or any part thereof.

In testimony whereof, the said parties hereto of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

His
CHARLES x SHORTER. [SEAL.]
mark.

Her
JULIA x SHORTER. [SEAL.]
mark.

Signed, sealed and delivered in the presence of
THEO. A. HARDING.
C. L. HARDING.

43 DISTRICT OF COLUMBIA, *To wit:*

I, Theo. A. Harding a Notary Public, in and for the said District, do hereby certify that Charles Shorter and Julia Shorter, his wife, of the District of Columbia, parties to a certain deed, bearing date on the Twenty-fourth day of June A. D. 1892, and hereto annexed, personally appeared before me in said District the said Charles Shorter and Julia Shorter, his wife, being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed; and the said Julia Shorter being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twenty-fourth day of June, A. D. 1892.

THEO. A. HARDING,
A Notary Public.

[NOTARIAL SEAL.]

(Endorsed.)

Received for record on the 19" day of July, A. D. 1892, at 1.06 o'clock p. m., and recorded in Liber No. 1698 at folio 416 *et seq.*, one of the Land Record for the District of Columbia, and examined by

B. K. BRUCE, *Recorder.*

44 COMPLAINANTS' EXHIBIT No. 7.

This indenture, made this Twenty-eighth day of June, in the year of our Lord one thousand eight hundred and Ninety-two, by and between Albert Lewis and Lettie Lewis, his wife, of Washington, D. C. of the first part and John D. Croissant and John O. Johnson, Trustees of the same place, parties of the second part, Witnesseth,

That the said parties of the first part, for and in consideration of the sum of Fifteen hundred and Fifty Dollars, in lawful money of the United States, to them in hand paid by the said parties of the second part, at and before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, released and conveyed, and doth by these presents, grant, bargain, and sell, alien, enfeoff, release and convey unto the said part- of the second part, their heirs and assigns forever, the following described real estates situate in the County of Washington and District of Columbia on the north side of Spring St. To wit: Parts of lots eleven (11) and twelve (12) of N. Dubos survey of Geo. B. Starkweather's recorded subdivision of part of "Pleasant Plains." Said parts begining at a stake on the front line of lot eleven (11) seven (7) feet from the south east corner of lot ten (10) thence northerly, parallel with the line of said lot ten (10) fifty five (55) feet to a stake, thence easterly forty (40) feet parallel with *with* the line of the street to a stake in lot twelve (12). Thence southerly and parallel with the first line fifty-five (55) feet to the street line; Thence westerly along the front line of lots twelve (12) and eleven (11)

45 forty (40) feet to the point of beginning; containing twenty-two hundred (2200) square feet more or less. The same being part of the property deeded by H. T. Wiswall to the said Starkweather Feb'y 4, 1887, and recorded in Liber 1225 folio 368 of the Land Records of the District of Columbia.

In and upon the uses and trusts following that is to say: In trust for the sole use and benefit of the persons who have contributed to the purchase of said described land, their heirs and assigns, as tenants in common, in the shares and proportions on which they have respectively contributed, with full power and authority in them, the said parties hereto of the second part, or the survivor of them, or the heirs of the survivor from time to time, and at all times, the same, or any or every part thereof, to manage, control, let, lease, sell or mortgage, and the rents, issues and profits thereof

to collect and receipt for, and the same, and every part thereof, from time to time and at all times, to convey to such person or persons, to such uses, and in such quantity and quality of estate or estates, whether in fee simple absolute or by way of trust or mortgage, or for any less estate, as the said parties hereto of the second part or the survivor of them, shall in their or his discretion, deem most for the interest and advantage of all parties concerned, without any liability or accountability of any tenant, purchaser or purchasers, mortgagee or mortgagees, or person or persons lending money, to see to the application of any money or monies paid, or advanced to the said parties of the second part, or the survivor of them, on account of said real estate, or any part thereof.

46 Together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to or out of the said pieces or parcels of land and premises.

To have and to hold, the said pieces or parcels of land and premises, with the appurtenances, unto the said parties of the second part their heirs and assigns, to their sole use, benefit and behoof, forever.

In testimony whereof, the said parties of the first part have hereunto set *our* hands and seals on the day and year first hereinbefore written.

ALBERT LEWIS. [SEAL.]
LETTIE LEWIS. [SEAL.]

Signed, sealed and Delivered in the presence of—
JAMES C. CHURCHILL.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, James C. Churchill, a Notary Public, in and for the District aforesaid, do hereby certify, That Albert Lewis and Bettie Lewis, his wife, parties to a certain Deed, bearing date on the Twenty-eighth day of June, A. D. 1892, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Albert Lewis and Bettie Lewis, being personally well known to me to be the persons who executed the said Deed and acknowledged the same to

47 be their act and deed, and the said Bettie Lewis wife of Albert being of full age and being by me examined privily and apart from her husband, and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and Notarial Seal this Twenty-eighth day of June, A. D. 1892.

JAMES C. CHURCHILL,
Notary Public, D. C.

[SEAL.]

(Endorsed.)

Received for record on the 20" day of July, A. D. 1892, at 10:30 o'clock A. M., and Recorded in Liber No. 1687 folio 339 *et seq.*, one of the Land Records of the District of Columbia.

B. K. BRUCE, *Recorder.*

48 COMPLAINANTS' EXHIBIT No. 8.

Liber 1488, Folio 161 *et seq.*

Trust. Recorded April 29th, 1890, 3.47 p. m.

George B. Starkweather
to
Ashford and Stickney.

This indenture, made this twenty-ninth day of April in the year of our Lord one thousand Eight hundred and ninety by and between George B. Starkweather of the District of Columbia and Emma L. Starkweather his wife parties of the first part, and Mahlon Ashford and George W. Stickney both of the City of Washington in the District of Columbia, parties of the second part. Whereas at a trustees sale held on the first day of March 1890 one Charles M. Armstrong as trustee did offer for sale and sold to John O. Silvers he being the highest and best bidder therefor at and for the sum of Forty two hundred and Twenty-six and 25/100 dollars the land hereinafter described upon the terms that one third of the purchase money was to be paid in cash and the remaining two thirds in two equal installments at the end of One and two years respectively and whereas said John O. Silvers has assigned his right & interest under said sale to said George B. Starkweather and hath this day united with said Charles M. Armstrong trusteee in a deed af said land to said George B. Starkweather. And whereas the said George B. Starkweather has paid to said Trustee the cash installment of the purchase money to wit: the sum of Fourteen hundred and Eight and 75/100 dollars and hath executed and delivered to said trustee his two promissory notes of even date herewith each for the sum of Fourteen hundred and Eight dollars and seventy five cents with interest at the rate of six per cent. per annum and payable respectively in One and two years from date interest payable semi-annually and being

49 desires to secure the punctual payment of said notes, when and as the same shall become due and payable with all interest and costs due and accruing thereon as well as any renewals or extensions of said indebtedness and all costs and expenses incurred under these presents. Now therefore this indenture witnesseth that the said parties of the first part for and in consideration of the premises aforesaid and further the sum of one dollar in lawful money of the United States paid to them by said parties of the second part have granted, bargained, sold, aliened, enfeoffed, released and con-

veyed and do by these presents grant, bargain, and sell, alien, enfeoff, release and convey unto the said parties of the second part and the survivor of them their and his heirs and assigns the following described Real Estate situate in the District of Columbia to wit. All that piece or parcel of land and premises designated as lots 1 to 44 of J. C. Lewis subdivision of part of Pleasant Plains situate in the north of Spring Street, at the point of Union with 14th street extended excepting the portion of lots 6 to 21 inclusive heretofore alienated being the property conveyed by H. T. Wiswall Trustee to George B. Starkweather by deed of February 4, 1887 and recorded in Liber 1225 folio 368 and by deed of August 9th 1887 by F. H. Stickney Trustee to George B. Starkweather and recorded in Liber 1271 folio 439 of the Land Records of the District of Columbia together with all the easements, hereditaments and appurtenances to the same belonging or in anywise appertaining and all the Estate, right, title, interest and claim whatsoever whether in law or in equity of the said parties of the first part, of, in, to or out of the said piece or parcel of land and premises. To have and to
50 hold the said piece or parcel of land and premises with the appurtenances unto and to the use of the said parties of the second part, the survivor of them their or his heirs and assigns in and upon the trust, nevertheless, hereinafter mentioned and declared that is in Trust to permit the said George B. Starkweather his heirs or assigns to use and occupy the said described premises and the rents, issues and profits thereof to take have and apply to and for his and their sole use and benefit until default be made in the payment of notes or any installment of interest due thereon or any taxes or insurance as hereinafter covenanted or any proper cost, charge, commission, half commission or expense in and about these presents. And upon the full payment of all of said notes and any extensions or renewals thereof and the interest thereon and of all sums expended for taxes or insurance by any party secured hereby and all other proper costs, charges, commissions half commissions and expenses incurred by means of these Trusts, at any time before the sale, hereinafter provided for to release and reconvey the said described premises unto the said George B. Starkweather heirs or assigns, at his or their cost. And upon this further Trust that upon any default or failure being made in the payment of either of said promissory notes or any installment of interest due thereon or any taxes or insurance as hereinafter covenanted or any proper cost charge commission half commission or other proper expense in and about these presents then and at any time thereafter to sell the said piece or parcel of land and premises or any portion thereof at public auction in front of the premises after at least ten days' notice of the time place and terms of sale by advertisement in some one or more of
51 the newspapers published in the City of Washington upon such terms and conditions as the said Trustees or the survivor of them may deem most advantageous to the parties interested and with further power in their or his discretion to postpone the sale from time to time and to sell on default of the purchaser and to convey the property sold in fee simple to and at the cost of the purchaser

or purchasers thereof who shall not be required to see to the application of the purchase money and out of the proceeds of said sale or sales first to pay all proper costs charges and expenses including all taxes general and special due upon said real estate at time of sale and to retain as compensation a commission of five per cent. on the amount of said sale or sales, secondly to apply said purchase money to the payment of whatever may then remain unpaid of the said indebtedness and the interest thereon at the time of said sale, whether the same shall be due or not and lastly to pay the remainder if any to said Charles M. Armstrong Trustee his executors administrators or assigns. And the said George B. Starkweather doth hereby covenant with the said parties of the second part the survivor of them their or his heirs or assigns that during the whole period of the continuance of this Trust all taxes general and special upon the said land shall be duly paid, when and as soon*er* as assessed and further that in case the said George B. Starkweather his heirs or assigns shall fail to pay any taxes as aforesaid then the taxes may be paid by any party secured hereby and the amount of taxes paid shall be considered part of the expense of said debt secured hereby in default of payment of which the said parties of the second part the
52 survivor of them his heirs and assigns shall have power to all said property hereby conveyed as aforesaid and shall dispose of the proceeds of sale as hereinbefore provided. And it is further agreed that if said property shall be advertised for sale under the provisions of this Deed and not sold then the said trustees shall be entitled to one half the commission above provided to be computed on the amount of the debt hereby secured and the amount of such half commission and the expense of such advertisement shall be considered a part of the cost and expenses hereof and their payment is hereby secured upon said property. In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER. [SEAL.]
EMMA L. STARKWEATHER. [SEAL.]

Signed, sealed and delivered in presence of
O. M. BALL.

DISTRICT OF COLUMBIA, *To wit:*

I, O. M. Ball, a Notary Public in and for the District aforesaid, do hereby certify that George B. Starkweather and Emma L. Starkweather his wife, parties to a certain Deed bearing date on the Twenty-ninth day of April A. D. 1890 and hereto annexed, personally appeared before me in the District aforesaid the said George B. Starkweather and Emma L. Starkweather being personally well known to me to be the persons who executed the said Deed and acknowledged the same to be their act and deed, and the said Emma L. Starkweather being of full age and being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed,

and declared that she had willingly signed, sealed and de-
53 livered the same, and that she wished not to retract it.

Given under my hand and Notarial Seal this Twenty-ninth day of April, A. D. 1890.

O. M. BALL, [SEAL.]
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *June* 1, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1488 fol. 161 *et seq.* one of the Land Records of the District of Columbia.

GEO. F. SCHAYER,
[SEAL.] *Dep. Recorder of Deeds.*

COMPLAINANTS' EXHIBIT NO. 9.

Liber 1714, Folio 137, *et seq.*

Deed. Recorded July 27th, 1900, 12:13 P. M.

Ashford and Stickney, Tr's
to
Croissant and Johnson, Tr's.

Whereas default having been made in payment of the indebtedness secured by the Deed of Trust from George B. Starkweather and wife bearing date the 29th day of April, A. D. 1890 and recorded the 29th day of April, A. D. 1890 in Liber No. 1488 folio 61 *et seq.* of the Land Records of the District of Columbia, Mahlon Ashford and George W. Stickney the trustees named in said Deed of Trust in strict execution of the power in them vested in and by said Deed and after having complied with all the requirements of said Deed did on the 28th day of May A. D. 1892
54 expose to public sale in front of the premises and pursuant to due public advertisement as required by said Deed of Trust the land and parcels of ground hereinafter particularly described when and where J. O. Johnson and J. D. Croissant Trustees being the highest bidders became the purchasers thereof at and for the sum of Twenty five hundred and Fifty dollars, which has been paid to said trustees and whereas the said J. O. Johnson and J. D. Croissant Trustees by signing these presents have directed the said trustees to convey the said land and premises to John D. Croissant and John O. Johnson Trustees in and upon the uses and trusts and with the powers hereinafter contained, and by reason of the premises the said John D. Croissant and John O. Johnson Trustees have become entitled to a conveyance of the land and premises so far as aforesaid; now therefore this indenture made this Twentieth day of July in the year of our Lord one thousand eight hundred and ninety two between Mahlon Ashford and George W. Stickney as Trustees as

above recited, parties of the first part and John D. Croissant and John O. Johnson Trustees of the second part all of the District of Columbia. Witnesseth that the said parties of the first part in consideration of the above recited premises and for and in further consideration of Five dollars current money of the United States to them in hand paid by the said parties of the second part, the receipt of which before the ensealing and delivery of these presents is hereby acknowledged have granted, bargained and sold aliened, conveyed and confirmed and by these presents do grant, and sell alien, enfeoff convey and confirm unto and to the use of the said John D.
55 Croissant and John O. Johnson as joint tenants their heirs and assigns all those certain pieces or parcels of land and premises situate and being in the County of Washington, District of Columbia and known and distinguished as and being all of lots Numbered One (1) to Forty-four (44) both inclusive in J. C. Lewis' subdivision of a tract of land called "Pleasant Plains" excepting as excepted in the aforesaid Deed of Trust, meaning and intending hereby to convey all the land conveyed to the parties hereto of the first part in and by said Deed of Trust. To have and to hold the said land and premises subject however to all liens and encumbrances appearing of record and all taxes unto and to the use of the said John D. Croissant and John O. Johnson their heirs and assigns. In trust nevertheless for the use and benefit of the parties who have contributed to the purchase thereof until disposal of in the shares and proportions in which they have contributed with full power and authority however in said Croissant and Johnson or the survivor or his heirs from time to time to sell mortgage or otherwise dispose of the same or any part thereof in their his or their discretion and the same or any part thereof from time to time and at all times in their or his or their discretion convey either in fee simple absolute or by way of trust or mortgage without any liability on the part of any purchaser or mortgagee or person loaning money on the security thereof, to see to the application of any purchase money or money loaned; with further power in their, his or their discretion to make and record any subdivision of said land or any part thereof.

56 In testimony whereof, the said Mahlon Ashford and George W. Stickney have hereunto set their hands and seals the day and year last hereinabove written as trustees as aforesaid.

MAHLON ASHFORD, [SEAL.]
GEORGE W. STICKNEY, [SEAL.]
Trustees.

JOHN D. CROISSANT, [SEAL.]
JOHN O. JOHNSON, [SEAL.]
Trustees.

Signed sealed and delivered in the presence of—
GEORGE E. FLEMING.

DISTRICT OF COLUMBIA, *To wit:*

I, George E. Fleming, a Notary Public in and for the aforesaid — do hereby certify that Mahlon Ashford and George W. Stickney trus-

tees parties to a certain Deed bearing date on the Twentieth day of July, A. D. 1892 and hereto annexed personally appeared before me in the District aforesaid the said Mahlon Ashford and George W. Stickney being personally well known to me to be the persons who executed the said Deed and acknowledged the same to be their act and deed as Trustees. Given under my hand and notarial seal this 27th day of July, A. D. 1892.

GEORGE E. FLEMING,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *August* 27, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1714 fol. 137 *et seq.* one of the Land Records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds. [SEAL.]

(I. R. Stamp.)

57 *Order Appointing Guardian Ad Litem.*

Filed July 16, 1903.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

Joseph D. Campbell, one of the defendants in the above entitled cause, having been duly summoned, and being now present in court, and it appearing to the satisfaction of the Court that he is an infant, over the age of fourteen years, and he having selected Hugh T. Taggart, Esq., as his guardian-*ad-litem,* it is this 16th day of July, A. D. 1903, ordered that the said Hugh T. Taggart be, and he hereby is appointed guardian-*ad-litem* for said infant defendant, to answer and defend this cause for him.

By the Court:

THOS. H. ANDERSON, *Justice.*

58 *Answer of John D. Croissant et al.*

Filed October 18, 1904.

(For Aug. 4, 1903.)

In the Supreme Court of the District of Columbia.

Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

The Joint and Several Answer of the Defendants, John D. Croissant and John O. Johnson, to the Bill in Said Cause.

1. These defendants admit the allegations of the first paragraph of said bill.

2. They also admit the statements contained in the second paragraph.

3. They also admit the making of the contracts between them and said George B. Starkweather for the purchase by them as trustees of the real estate mentioned in the third paragraph of said bill, and that said George B. Starkweather subsequently conveyed said land to them as trustees upon the trusts mentioned in said deed filed with said bill as exhibit No. 1. They also admit that the terms of said purchase are correctly set forth in said third paragraph. It is also true, as stated in said paragraph, that at the time of the purchase by these defendants of said real estate it was understood that it was being purchased for the benefit of a syndicate composed of the persons mentioned in said paragraph. It is also true that it was understood at the time that these defendants should be the trustees for the management of the said property, but they say that their

59 powers, duties and liabilities were prescribed and limited by the terms of the said deed in trust to them from said Starkweather and by the certificates issued by these defendants to the persons interested in said syndicate, hereinafter referred to as a part of their answer, and these defendants hereby refer to said deed in trust and said certificate and say that they never had any other powers or authority in the premises than those contained in said two papers and the contracts referred to in said paragraph. It is true that said real estate was divided into thirty equal shares of $2500 each. They also admit that the seven acre tract of land conveyed by said Starkweather to these defendants by deed bearing date the 1st day of June, 1903, is correctly described in said third paragraph.

They also admit that at the time of the conveyance by the said Starkweather to them of said seven acre tract, the same was subject to a deed of trust given by said Starkweather to Andrew B. Duvall

and Charles C. Cole to secure payment of a certain promissory note of the said Starkweather and that he failed to pay the same and said seven acre tract was subsequently sold under said deed of trust and bought by the complainant Jenner, and that said last named trustees conveyed the same to said Jenner by deed bearing date the 3rd day of February, 1898, and that all the equity of the said Starkweather and of said syndicate in the said tract was extinguished thereby.

They also admit the conveyance to them by said Starkweather and wife of the parcels of land mentioned in said third paragraph by deed bearing date the 2nd day of May, 1892, and that said
60 conveyance was made pursuant to the contract mentioned in said third paragraph, and that the same were conveyed to them as trustees for the benefit of said syndicate. These defendants also admit that the said Starkweather failed to purchase and acquire title to the lots heretofore conveyed by him to colored people as he bound himself to do in and by the contracts mentioned in said third paragraph, and that these defendants did, as provided in said contracts, purchase from said owners the several parcels mentioned and took conveyances to themselves therefore as trustees for the benefit of said syndicate as specified in said third paragraph, for which they paid large sums of money out of the funds of said syndicate.

These defendants also admit that prior to the conveyance to them by the said Starkweather of May 2nd, 1892, he had encumbered the same by a deed of trust to Ashford & Stickney, trustees, to secure payment of a certain promissory note in said deed of trust described, and that said Starkweather failed to pay said note and said trustees advertised and sold the said parcels of land for the payment thereof, and at said sale these defendants, as trustees as aforesaid, purchased the same for the benefit of said syndicate, and the same was conveyed to them by said Ashford and Stickney to hold upon the same trusts declared in the deed from Starkweather to them conveying the seven acre tract.

4. These defendants admit that about the time or shortly after the formation of said syndicate, they did issue certificates of shares in said syndicate, and they believe that the contents and
61 provisions of said certificates are recited in said fourth paragraph with substantial accuracy, but for greater certainty they hereby make one of said certificates a part of this answer, and file herewith as an exhibit a copy thereof marked "A" and the original will be produced at any time when required by the court or any party to this suit.

These defendants for further answer to said fourth paragraph say that said certificates were issued at the suggestion of the then members thereof who desired some evidence of their interest in said syndicate, and the terms and conditions thereof are such as were then agreed and determined upon by all the persons then interested in said syndicate. It is true, as stated in said fourth paragraph, that only twenty-four of said certificates have been issued, the remaining six still being in the possession of these defendants. They have never sold or assigned to any person any interest in either of said six shares, and have never received any money thereon from any

source whatever. Defendants upon information and belief admit that the twenty-four shares or certificates which have been issued and are now outstanding are respectively owned and held by the persons as set forth in the said fourth paragraph. They also admit upon information and belief that the said Robert G. Campbell departed this life, leaving surviving him the widow and children, his devisees, as stated in said fourth paragraph.

5. These defendants also admit, as stated in said Fifth paragraph, that the said syndicate became indebted for taxes, interest and
62 other expenses of running said syndicate and on or about the 30th day of January, 1898, was indebted on such accounts in the sum of $3648.26, and that these defendants, as trustees of said syndicate, gave their notes therefor to the persons and in the amounts mentioned in said fourth paragraph, as the best method of settling said indebtedness and with the understanding that such transaction would entitle the holders of said notes to be paid out of the property of said syndicate or the proceeds of sale thereof. These notes represent all the present indebtedness of the said syndicate. But it is not true as might be inferred from the allegations of said fourth paragraph that they assumed to do this wholly by virtue of the trust and powers conferred upon them by the deeds from said Starkweather and the certificates issued by these defendants.

6. The statement of the sixth paragraph of said bill that these defendants have never made a statement of account to the certificate holders from the organization of said syndicate to the time of the filing of the bill in this cause is true in the sense and to the extent that these defendants have never caused a written itemized account of all the transactions to be delivered to each of the said certificate holders. But it is also true that the said trustees kept accurate account of all their transactions and their receipts and disbursements on account of said syndicate, which were always open to the inspection of each and all the members thereof, and they believe that they were frequently inspected by members of the syndicate, and that each knew from such inspection the state of the accounts of these defendants as trustees, at all times. The
63 members of said syndicate had occasional meetings, and at such meetings the accounts of these defendants and the financial condition of the syndicate were discussed and in this way the members of the syndicate were always informed of the state of the accounts of these defendants as trustees. And on or about the — day of —— at a meeting of the members of said syndicate, a full itemized account of all the transactions of these defendants as trustees, from the formation of said syndicate to that date, containing a statement of all receipts and disbursements with vouchers for the latter, were laid before said meeting by these defendants, and examined by the members of the syndicate to such extent as they were inclined, which account showed that these defendants had disbursed for syndicate purposes all moneys which had come to their hands as trustees from all sources, belonging to said syndicate, and that nothing remained in their hands to apply to the then existing indebtedness of said syndicate. And no member of the

syndicate at that time challenged any item in said account, or claimed that it was inaccurate in any particular, nor has any one of them done so since that time, nor has any member of said syndicate demanded any accounting from these defendants until the filing of the original bill in this cause, except the demand made by said Starkweather in a suit filed by him in this Court known as Equity Cause No. 16,612, in which the respondents were anxious and willing then to render said accounting, but were prevented from so doing by the dilatory tactics of said Starkweather in that case. And since the said meeting at which said account was prevented these defendants have received no money for or on account of said syndicate. And these defendants say that they have disbursed all moneys of said syndicate, which have come to their hands
64 and are not indebted to it in any sum whatever, but do not object to rendering an account under the direction of the court. They admit that the taxes are accumulating on the property as stated in the said sixth paragraph, and they say that there is no fund in their hands and no income from the property out of which such taxes can be paid, and they admit that it is for the advantage of all parties having any interest in the property that the same should be sold under the direction of the court, and the proceeds of sale, after payment of debts, distributed, and they submit to such decree in the premises as it may seem to the court equitable and just to make.

And having fully answered they pray to be dismissed with their costs.

JOHN D. CROISSANT,
JOHN O. JOHNSON,
Solicitors for Respondents.

DISTRICT OF COLUMBIA, *To wit:*

John D. Croissant and John O. Johnson, being first duly sworn, depose and say that they are the respondents named in the foregoing answer by them subscribed; that they have read said answer and know the contents thereof, and that the statements therein made of their own knowledge are true, and those therein made upon information and belief, they believe to be true.

JOHN D. CROISSANT.
JOHN O. JOHNSON.

65 Subscribed and sworn to before me this 3rd day of August A. D. 1903.

WALTER F. DONALDSON,
[SEAL.] *Notary Public, D. C.*

This answer was shown to me about the time it was sworn to, and was withheld from the files by agreement. At the time it was signed and sworn to John D. Croissant was doing business as usual and was to the best of my belief of sound mind.

B. F. LEIGHTON,
Sol'r for Complainants.

Endorsed.

Let this answer be filed now as for the fourth day of August, 1903.

THOS. H. ANDERSON, *Justice.*

66 *Answer of George B. Starkweather.*

Filed April 19, 1904.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN O. JOHNSON ET AL.

This defendant for answer to the Amended Bill of Complaint herein filed, or to so much and such parts thereof as he is advised it is necessary or material for him to answer, says:

First. He admits the statements of the first paragraph.

Second. He admits the statements of the second paragraph.

Third. Answering the statements of the third paragraph, this defendant for greater certainty refers to the several instruments in writing therein referred to for the contents of the same, and submits to the court the legal conclusions sought to be drawn therefrom by the complainant.

For further answer to the allegations of said paragraph, this defendant denies that the defendants Croissant and Johnson, as trustees, were clothed "with full power to manage and sell said property," meaning thereby the ten acres containing 400,000 square feet of ground, more or less; but on the contrary avers that such authority to manage and sell was conferred upon said trustees and limited to the seven acre tract under the contracts and agreements made between the parties in interest in reference thereto.

67 For further answer to the allegations of said paragraph this defendant denies, that because of any "default having been made in the payment of said indebtedness by the said George B. Starkweather (this defendant) the said trustees A. B. Duvall and C. C. Cole made the alleged sale and conveyance described in said paragraph; but on the contrary this defendant says that under the contract and agreement made with the purchasers of the property described in these proceedings, the said purchasers assumed the payment of the deeds of trust existing upon said property at the time of the purchase thereof and relieved this defendant of the payment thereof or the care and protection of the notes secured thereby.

For further answer to the allegations of said paragraph this defendant denies, that by the alleged sale and conveyance by the

trustees Duvall and Cole to the complainant Jenner of the property described in said paragraph "the rights of the said Syndicate in and to the part of the said Crescent Heights property so sold as aforesaid, became and were extinguished;" but on the contrary he avers that whatever rights, if any, were acquired by the said complainant Jenner in and by virtue of said alleged sale and conveyance, were for the benefit of all of the persons interested in said Crescent Heights Syndicate as syndicate-holders and by said Jenner held as trustee for their benefit.

This defendant further denies, as alleged in said paragraph, that "default having been made by the said Starkweather (meaning this defendant) in the payment of the indebtedness secured by said trust (meaning a certain trust to Ashford and Stickney
68 dated April 29, 1890 and recorded at Liber 1488 at folio 161) the said trustee" sold and conveyed the said property as aforesaid; but on the contrary avers that as alleged in the former part of this answer, with reference to the certain other trust to Duvall and Cole, the indebtedness secured by the said trust to Ashford and Stickney was assumed by the purchasers of the property in this bill described from this defendant and this defendant was relieved from the care and protection of the said indebtedness and the payment thereof.

Fourth: Answering the statements of the fourth paragraph, this defendant admits that certain certificates were issued to the persons acquiring interests in said property but for greater certainty refers to the said certificates for their terms, rather than the alleged contents thereof as set forth in said paragraph.

Further answering said paragraph, this defendant says that under the contract and agreement made with him by the purchasers of said property and the persons beneficially interested in said syndicate certificates, this defendant was relieved from the payment of any assessments whatever for or on account of the holding by him of any of said Syndicate certificates for the payment of any indebtedness or interest thereon which existed on said property at the time of the purchase thereof from him by the persons interested in the Crescent Heights Syndicate.

Further answering said paragraph this defendant says, that in addition to the four shares therein referred to in which this defendant is alleged to have an interest, he is also beneficially interested and has an equity of redemption in three other certificates.

This defendant further says, that he has no personal knowledge or information save the allegations of said bill as to the present
69 owners or holders of the outstanding certificates in said syndicate; but says that as to the six certificates referred to as having been held in the treasury and not disposed of, this defendant says that the same were retained for the purpose and under the contract to pay off all indebtedness remaining on and against the said Crescent Heights property.

Fifth: Answering the allegations of the fifth paragraph, this defendant says that the certain proceedings in court were taken in the two causes therein referred to and known as Nos. 20,360 and 22,124

to which this defendant refers for greater certainty as to the action taken.

This defendant further says that in said cause No. 22,124 a restraining order was issued against the collection of the alleged assessments and still remains in force.

Sixth: Answering the statements of the sixth paragraph, this defendant says that it is true as therein alleged that the defendants Croissant and Johnson, as trustees, have never made a statement of the account to the Syndicate certificate-holders from the organization of said Syndicate to the present time; and this defendant says that he has at various times, as shown by the bills of complaint filed by him in this court, endeavored to secure from said trustees a statement of account but has, to this time, been unable to do so; that said bills of complaint seeking to secure such aid and relief are still pending in this Honorable Court.

This defendant further says that under and by virtue of the power conferred upon the trustees Croissant and Johnson under the
70 contract and agreement of the Syndicate-holders, said trustees were authorized and empowered to make assessments for all proper and legal expenses and the payment of all proper taxes by assessments, but so to do they have failed, neglected and refused; but if any default has been made in the payment of the legal and proper taxes due on the said property, it has been solely through the neglect and refusal of the said trustees to perform the duty and discharge the obligation imposed upon them under the contract and agreement with the parties interested in said Syndicate.

For further answer to the said amended bill this defendant denies that the complainants are entitled to the relief therein prayed for and against this defendant, save that the complainants and all others in interest in said property are entitled to an accounting from said trustees.

And now having fully answered, this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

GEO. B. STARKWEATHER.

R. P. EVANS,
EDWIN FORREST,
Sol'rs for Compl't.

George B. Starkweather being first duly sworn according to law deposes and says: That he has read over the above answer by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief he believes to be true.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 9th day of April, 1904.

M. A. SCHEELE,
Notary Public, D. C.

[SEAL.]

71 *Answer of Hannah Campbell et als.*

Filed December 15, 1904.

In the Supreme Court of the District of Columbia, Holding Equity Court.

In Equity. No. 23436.

JOHN T. DYER ET AL., Complainants,
vs.
JOHN D. CROISSANT ET AL., Defendants.

The joint and several answer of the defendants Hannah Campbell, Emma McWilliams, Anna May Campbell, James N. Campbell, William J. Campbell, Benedict F. Campbell and Hannah May Campbell to the second Amended Bill of Complaint exhibited against them and others in the above-entitled cause.

These defendants jointly and severally answering the said amended bill, say:

1. They are not fully informed as to the truth of the averments of the first paragraph of said bill in regard to the citizenship and residence of the Complainants but having no reason to doubt the truth thereof, they admit the same.

2. Answering the second paragraph of said bill they say, that they admit the said Hannah Campbell is the widow of Robert G. Campbell, deceased; that the said Emma McWilliams is the wife of Bernard McWilliams, and that she the said Emma McWilliams, Anna May Campbell, James N. Campbell, William I. Campbell, Benedict F. Campbell and Hannah May Campbell and their
72 co-defendant Joseph D. Campbell are the children and sole heirs at law of the said Robert G. Campbell, and that the said widow and children are devisees of the said Robert G. Campbell; and that the said Joseph D. Campbell is an infant under the age of twenty one years. As to the averments of the said paragraph which relate to persons other than the said widow and children they have no personal knowledge and leave the complainants to prove the same.

3-4. Answering the third and fourth paragraphs of the said bill they say that except as hereinafter stated they have no personal knowledge of the facts averred therein and they leave complainants to their proof of the same. They admit that the said Robert G. Campbell died testate and left him surviving a widow and children as aforesaid and they say that the said widow, Hannah Campbell has duly qualified as the Executrix of the last will and testament of the said Robert G. Campbell and they crave leave to produce from the files of this court and to read the said last will and testament as a part of this answer, if it be necessary to do so; they admit that at the time of his death the said Robert G. Campbell was the owner of three (3) shares in the said real estate known as Crescent Heights repre-

sented by certificates of the kind described, and that such interest as he the said Robert G. Campbell had, at the time of his death, in the premises described in said bill is now vested in these defendants and the said Joseph D. Campbell, infant son of the said Robert G. Campbell.

These defendants consent in so far as their interests in the premises are concerned that the affairs of the syndicate, so called may be wound up under the direction and supervision of the court,
73 and to this end that all necessary orders and decrees may be passed by the court.

HANNAH CAMPBELL.
EMMA McWILLIAMS.
ANNA MAY CAMPBELL.
W. J. CAMPBELL.
JAMES W. CAMPBELL.
HANNAH MAY CAMPBELL.
BENEDICT F. CAMPBELL.
By HUGH T. TAGGART,
His Solicitor.

HUGH T. TAGGERT,
Sol'r for said Def'ts.

General Replication.

Filed Dec. 15, 1904.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL., Complainants,
vs.
JOHN D. CROISSANT ET AL., Defendants.

Complainants join issue with the defendants, John D. Croissant and John O. Johnson, Trustees, Henrietta Stuart, George B. Starkweather, Hannah Campbell, Emma McWilliams, Anna May Campbell, James N. Campbell, William J. Campbell, Benedict F. Campbell, Hannah May Campbell and Joseph D. Campbell, on their answers to complainants' bill of complaint.

B. F. LEIGHTON,
Solicitor for Complainants.

74 *Testimony on Behalf of Complainants.*

Filed June 21, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

WASHINGTON, D. C., *January* 17, 1905.
Tuesday at 3 o'clock p. m.

Met, pursuant to notice served on the solicitors for the defendants, to take testimony on the part of the complainants in the above entitled cause.

Present: Benjamin F. Leighton, Esq., Solicitor for certain complainants, R. Golden Donaldson, Esq., Solicitor for the defendant trustees, Richard P. Evans, Esq., Solicitor for certain defendants, and the complainant Herbert W. T. Jenner and the defendant George B. Starkweather *in propria persona.*

Whereupon—

Mr. EVANS: I wish to interpose an objection to proceeding with this examination at this time, because of the fact that this bill of complaint in this case appears to limit and restrict the property of this syndicate to about three acres of land, and the prayers of the bill are based upon that alleged condition of the syndicate holding; that, as a matter of fact, there is now pending on appeal to the Court of Appeals of the District of Columbia a case known as
75 Equity No. 20205, in which the title to seven acres of the original holding of this syndicate is sought to be brought into the syndicate, which, if done, under a decree of the Court of Appeals would materially increase the holdings and assets of the syndicate, and make what is apparently and as alleged in this bill an insolvent association solvent. For this reason it is objected, that the proceedings in this case should be held in abeyance awaiting the determination of the equity cause in question.

Thereupon ELLIS SPEAR, called as a witness on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. General, you are one of the parties complainant in this suit? A. I am.

Q. Examine the bill, please, and see if you know the other parties to the litigation? A. (After examining same.) I know personally

all the complainants except Dyer and Peale. Shall I speak of the defendants too?

Q. Yes. A. Of the defendants I know Croissant and Johnson, Starkweather and Giesy, but not the others, according to my present recollection.

76 Q. Are you a shareholder in the syndicate known as the Crescent Heights Syndicate, which forms the subject matter of this litigation? A. I am.

Q. How many shares do you hold? A. One.

Q. I show you a note bearing date January 28th, 1898, purporting to be signed by John O. Johnson and J. D. Croissant, trustees, payable to your order in one year from date for $2378.79, and I ask you to state whether or not the signatures to that note are those of the defendants Johnson and Croissant? (Handing witness note.)

A. (After examining same.) They are.

Q. What relation did they sustain to this syndicate? A. They held the property as trustees.

Q. For the syndicate? A. For the syndicate.

Q. I wish you would state whether that is your signature on the back of that note? A. No, my signature is not on the back.

Q. Never was endorsed? A. No.

Q. I will show you a note bearing date February 3rd, 1897, for $477.07, signed or purporting to be signed by J. D. Croissant and J. O. Johnson, trustees, payable to the order of the makers personally, in sixty days after date, and I ask you to state whether or not the signatures to that note are those of the defendants Croissant

77 and Johnson? A. They are.

Q. State whether it is the signatures of those makers on the back of the note? A. Yes.

Q. Is your signature also there? A. It is.

Q. I show you another note bearing date April 6, 1897, for $481.85, payable to the order of J. D. Croissant and J. O. Johnson, purporting to be signed by J. O. Johnson, trustee. State whether or not that is the signature of Johnson to that paper? A. It is.

Q. Whose signatures are on the back of it? A. The same signature, J. O. Johnson and my own.

Q. I show you another note purporting to be made by the same parties, dated June 16, 1897, for $333.94, payable to the order of the makers personally. State whether or not it is their signatures to the note, and their signatures on the back of it? (Handing witness note.)

A. (After examining same.) The signatures on the face of the note are those of Croissant and Johnson, and those signatures are also upon the back of the note, together with my own.

Q. Can you tell for what purpose those notes were given, and how the note for the larger sum was given payable to your order—for what purpose? A. The notes for the smaller sums were

78 given for the purpose of raising money to meet demands upon the property.

Q. What sort of demands? A. Interest upon the notes secured by deeds of trust upon the property owned by the syndicate.

Q. You know when these incumbrances were put upon the property, and by whom—were they anterior or subsequent to the date of the formation of the syndicate? A. They were anterior to the purchase of the property by the syndicate, but I knew nothing of them until after I had purchased my share in the syndicate. I don't know when these incumbrances were placed upon the property.

Q. At the time you made the purchase in the syndicate, did you know anything about the condition of the title to the property? A. I did not of my own knowledge. I trusted that matter to the trustees.

Q. Croissant and Johnson? A. Yes.

Q. Why was the note for the sum of $2378.79 given—can you give us the history of that note? A. Prior notes for the smaller amounts of which I have just testified became due, and, my recollection is that they were for a considerable time overdue. The bank was pressing for payment; at any rate, they pressed me, and I suppose they did the others. I was not willing to have my name upon notes in such condition. The others did not pay, and I did. I paid the bank for these notes endorsed by me out of my own
79 pocket.

Q. By others who didn't pay, whom do you mean? A. I mean Johnson and Croissant.

Q. Was the money, at the time those notes were discounted, paid you or paid to the trustees Croissant and Johnson? A. It was paid to Croissant and Johnson.

Q. Never passed into your hands? A. No. Now, wait one minute. Let me add there; My recollection is that when the money was raised upon one of the notes Mr. Johnson placed in my hands certain papers indicating the amounts of money—bills, or some such papers, indicating the money due from the syndicate and parties to whom it was due.

Q. And on what account? A. And on account of the syndicate, and I paid over that money myself.

Q. To the parties? A. To the parties.

Q. Who were named by him? A. Named by him.

Q. Have you got the memoranda or data showing to whom you disbursed the money, and on what account, in your possession? A. I don't know that I have.

Q. Do you know what has become of it? A. Those papers were put into an envelope with other papers that were left in the bank. That is my recollection of the matter. The other moneys raised upon those notes did not pass through my hands.

80 Q. You have not told us, General, why the note for the large sum was given? A. It was given to reimburse me for the money I had advanced in payment of the two notes endorsed by me, and also to satisfy Croissant and Johnson, the trustees, for the money advanced by them in payment of the notes which they had given for the benefit of the syndicate.

Q. Then, notes of smaller amounts, but aggregating in the whole that sum, were or were not discounted at the Columbia National Bank for the benefit of this syndicate? A. They were.

Q. How much money did you yourself pay on account of the syndicate, and the dates of such payments—can you name the amount and the dates? A. The amount is the aggregate of these notes which I endorsed, with the interest added thereto, up to the date of payment, which was a little prior to the date of the note for $2,378.79, to the best of my recollection.

Q. Were or not those notes paid by check that you endorsed? Do you recollect whether you paid them to the Columbia Bank by check? A. I probably did, though I do not remember.

Q. General, the note dated April 6th, 1897, seems to be a renewal of the note of February 3, 1897, plus the interest. Examine those two notes and see if that is not so, and whether or not it
81 be so? A. (After examining same.) That is so.

Q. Then, the last note was the one which you actually paid, and for which you claim credit? A. Yes.

Q. Then, the sum which you paid for that, and the amount that was paid on the note of June 16th, represents what is due to you from the syndicate? A. I think that is so.

Q. Has any part of that been paid or secured to you in any manner? A. No, not paid or secured in any manner.

Mr. LEIGHTON: I offer in evidence those notes, and ask the Examiner to make copies of them, and mark the originals only for identification.

(And the same are marked by the Examiner "For identification E. S. Nos. 1, 2, 3, and 4;" and copied into the record as follows:)

$2378 79/100 WASHINGTON, D. C., *January* 28, 1898.

One year after date, for value received, we promise to pay to Ellis Spear or order, the sum of Twenty Three Hundred and Seventy Eight and 79/100 Dollars, at — with interest at the rate of 6 per centum per annum until paid; payable semi-annually.

JNO. D. CROISSANT, *Trustee.*
JOHN O. JOHNSON, *Trustee.*

82 (In left hand corner.)
Secured by deed of trust on pts. Lots in J. C. Lewis' subdivision.

S. HERBERT GIESY,
BRAINARD H. WARNER, *Trustees.*

(Endorsements on back.)
We this 27th day of Dec. 1901, promise to pay the within note.

JOHN O. JOHNSON, *Trustee.*
J. D. CROISSANT, *Trustee.*

$477.07. WASHINGTON, D. C., *Feb.* 3*d,* 1897. No. —.

Sixty days after date, for value received, we promise to pay to J. D. Croissant, J. O. Johnson, or order, the sum of Four hundred Seventy Seven and 07/100 Dollars at the Columbia National Bank,

Washington, D. C., with interest at the rate of 6 per centum per annum until paid.

J. D. CROISSANT, *Trustee.*
J. O. JOHNSON, *Trustee.*

Crescent Heights Syndicate.

(Endorsements on back:) J. D. Croissant, J. O. Johnson, Ellis Spear, John O. Johnson.

83 $481.85 WASHINGTON, D. C., *April 6th,* 1897.

Ninety days after date we promise to pay to the order of J. D. Croissant, J. O. Johnson Four Hundred Eighty One and 85/100 Dollars, at The Columbia National Bank of Washington, for value received, with interest.

——— ———, *Trustee.*
J. O. JOHNSON, *Trustee.*

Crescent Heights Syndicate.

(Endorsements on back:) J. O. Johnson, Ellis Spear.

$333.94. WASHINGTON, D. C., *June* 16, 1897.

Ninety days after date we promise to pay to the order of J. D. Croissant, J. O. Johnson Three Hundred and Thirty Three and 94 — Dollars at The Columbia National Bank of Washington, for value received, with interest.

J. D. CROISSANT, *Trustee.*
J. O. JOHNSON, *Trustee.*

Crescent Heights Syndicate.

(Endorsements on back:) J. D. Croissant and J. O. Johnson Ellis Spear.

84 By Mr. LEIGHTON:

Q. General, I will ask you to examine the endorsement on the back of the note of January 28th, 1898, for $2378.79, and state whether or not the signatures there are those of the defendants Johnson and Croissant? A. They are.

Mr. LEIGHTON: I also offer that endorsement in evidence.

Q. Do you know anything about as to who is entitled to the proceeds of the balance of this large note for $2378.79? A. I don't know who is now entitled to the balance. The money was originally intended for Croissant and Johnson, the trustees.

Q. Why? A. On account of the money advanced by them to pay notes which they had given to the bank for the purpose of raising money to meet the obligations of the syndicate, as I did. That is my recollection.

Q. Do you know whether the notes given by Croissant and Johnson on which they procured money, as you say, for the use of the syndicate—whether those notes were paid by them, or either of them, and when? A. I don't know of my own knowledge. I so understood.

Q. Are you familiar with the property—the three acre tract belonging to the Crescent Heights Syndicate that they have
85 left after the sale of the seven acre tract? A. Yes. I don't know the precise metes and bounds, but I know the property.

Q. Will you state whether, in your judgment, that property is susceptible of division in kind between the members of the syndicate without loss and injury to them, supposing the syndicate to be free from debt? A. No, I don't think it could be so divided.

Q. How, in your judgment, is the best mode of disposing of it so as to get the interest of the various parties in the property out? A. It is possible that one or two lots might be sold separately, but the bulk of it, in my judgment, would have to be sold as a whole for a profitable sale.

Q. Can you state, General, whether or not you have had any experience in dealing in real estate in the District of Columbia—whether you own property, and to what extent you did in that neighborhood, or vicinity? A. I have not had much experience; I don't know that I want any more. I haven't had much experience. I have a house and lot in that vicinity. I own no other real estate in the District.

Q. Are you familiar with properties in that locality, more or less? A. Yes, I know something about it.

Q. I will show you what purports to be a blank syndicate certificate, and ask you if that is similar to the ones that were issued by the trustees, and similar to what all of the shareholders
86 have? (Handing same to witness.) A. (After examining same.) It is similiar to that which I hold as a shareholder in the Crescent Heights Syndicate.

Q. Have you seen others? A. I cannot recall now that I have seen others.

Mr. DONALDSON: We admit, so far as the trustees are concerned that that is a correct copy of the syndicate certificates issued in the Crescent Heights Syndicate, and being one of those taken out of the stock book by Mr. Leighton.

Mr. EVANS: On behalf of the defendant Starkweather, the same admission.

Mr. LEIGHTON: I offer that in evidence and ask that it be marked.

(And the same is filed by the Examiner, marked Complainants' Exhibit 10.)

Mr. LEIGHTON (to the witness): I don't know of anything else that occurs to me. If you know of anything eise of importance in your testimony you can so state, General.

The WITNESS: Nothing occurs to me at this moment.

Cross-examination.

By Mr. EVANS:

Q. General, can you state the exact amount of your personal claim now existing against the syndicate? A. I should have to refer to the notes, and I am unable at this moment to state the precise amount, for the reason that what I paid on these notes was
87 the face of the notes plus the accrued interest. I refer to the notes in evidence which were endorsed by me.

Q. I understand, then, you only make claim with reference to these two notes offered in evidence by Mr. Leighton, one for $481.85 dated April 6th, 1897, and the other for $333.94, dated June 16, 1897? A. Yes, I think that's right, so far as my own personal claim is concerned.

Q. And this note which is dated February 3, 1897, for the amount of $477.07 is not included in your claim, having been covered by the note dated April 6th, 1897? A. Yes, I believe that to be true.

Q. I notice this note of April 6, 1897, is prepared as if to be signed by two trustees. It is only signed by John O. Johnson, trustee, and not by J. D. Croissant. Can you explain as to how that occurred? A. I can give you my theory of it.

Mr. DONALDSON: I object to any theorizing. I would like to have the facts, if they are known. If not, then we had better not speculate about it, I take it.

A. I do not know how it happened that Croissant did not sign. The bank was willing to take the note with my endorsement.

Q. Well, as it stands now, the note is given by J. O. Johnson, trustee, payable to the order of J. D. Croissant and J. O. Johsnon?

Mr. DONALDSON: I object to that. The note itself will disclose what it is, and what it purports to be.

88 Q. (Continuing:) I want to get it on record here. And it is endorsed only by J. O. Johnson, although it is made payable to J. D. Croissant and J. O. Johnson. Was not that in the nature of a personal transaction between yourself and Mr. Johnson? A. It was not.

Q. Do you know, of your own knowledge, that the money secured from that note went to the payment of any liabilities on the Crescent Heights Syndicate? A. That particular note was to take up a previous note signed by Croissant and Johnson and endorsed by me. The proceeds of the note last named went to meet the obligations of the syndicate.

Q. Did you disburse that money? A. No, I did not personally.

Q. Were you present when it was disbursed? A. Well, I was present at the meetings of the syndicate. I knew of the obligation. I knew that the money was raised upon the notes for the purpose of meeting those obligations, and although I cannot now say that I saw the money paid over I know that the obligations were met at that time, and that we were relieved from the stress of that occasion.

Q. Will you please state what obligation was met by the proceeds

from that note? A. They were obligations resting upon the syndicate arising out of interest charged on the prior mortgage upon the property.

Q. And you personally know that that money was applied
89 for the payment of those charges? A. I cannot say that I saw it paid over to the parties, but I have no doubt, from the conditions existing at that time, that it was so paid.

Q. Now, we take the note of June 16, 1897. Is that the note about which you testified you made some disbursements yourself? A. That is my recollection, that I made the disbursements of the money raised on that note, or a part of it. I remember that Mr. Johnson was about leaving town and left the matter in my hands. I don't remember the exact amount of the payments I made.

Q. Were the payments you made applied to other matters different from the ones to which you have testified in relation to the note of February 3, 1897? A. No. It is possible that some of the money may have gone to pay taxes, but I have no recollection of that. My recollection is that it went to meet the obligations arising upon the interest charges; although, as I say, after so long a time, I cannot speak definitely as to the amounts paid, but I know that the money was paid to meet the obligations of the syndicate.

Q. General, will you state whether or not the syndicate authorized you to make these payments, or authorized Johnson and Croissant to borrow these sums of money for the purpose of meeting these payments? A. They did.

Q. Will you state when and on what occasion? A. I
90 cannot give you the date—the precise date. The authority was given by meetings of the syndicate which I attended before the notes were made, and the notes were made for that express purpose, and the trustees were instructed to use the money for the purpose of meeting those obligations.

Q. Were there any records or minutes kept of those meetings? A. I presume so, but I have no recollection about them. I didn't keep any minutes.

Mr. EVANS: I call upon the solicitors for the complainants to produce before the Examiner at the next hearing the minutes or records of this syndicate referred to in which the trustees were authorized to negotiate these loans.

Mr. LEIGHTON: The Solicitor for the complainants states that there are no such records in his possession, and if there are any such they are in the possession of the defendants Croissant and Johnson as trustees, naturally. Whether they are really or not, I don't know.

Mr. DONALDSON: I would like to state, on behalf of the trustees, that we have made endeavors to secure these books, and that counsel speaking has personally searched through the files in the court house, and through the various suits heretofore instituted and prosecuted in reference to this matter, and he is unable to find these books, although it is said that at one time they were before the Auditor.

By Mr. EVANS:

91 General, you were a member of this syndicate from its inception, were you not, and one of the original subscribers? A. I was one of the original subscribers. That is my recollection.

Q. And you were acquainted with all the conditions and provisions governing the trustees, were you not? A. I cannot say that I was.

Q. This certificate which you hold you testified to is the same as the form of certificate which has been offered in evidence here? A. Yes.

Q. And that certificate contains a statement as to the authorities and duties of the trustees in the premises? A. That is my recollection.

Q. In the certificate is not there a proviso for the raising of money by the trustees for the payment of the various charges you have testified about, other than the borrowing of money?

Mr. DONALDSON: On behalf of the trustees, I object to that question as incompetent. The certificate itself will show just what it is, and the contents of it.

A. I believe there is.

Q. And from your testimony it appears that you were actively concerned with the trustees Johnson and Croissant in raising this money for the payment of these charges. Now, I ask you

92 why, instead of pursuing the course you did, you did not have the conditions of the syndicate certificate carried out? A. I was not the syndicate. I held only one share in it.

Q. I understand you attended these meetings you have testified to? A. Yes.

Q. Why didn't you insist upon the provisions of this contract between the trustees and the syndicate holders being carried out and enforced for the purpose of raising money properly? A. As far as I was personally concerned, I should have preferred that method, but that did not seem to be the wish of the syndicate.

Q. When you say "the wish of the syndicate," to whom do you refer? A. I refer to the members of the syndicate—of a majority of them.

Q. I would like to have the names of those you refer to? A. I cannot give you the names.

Q. Can you mention some of them? A. Not at this time I cannot mention any.

Q. Was Mr. Jenner one of them? A. My recollection is that he was of the opinion that it would be better to raise the money by assessment. I speak that not confidently, because it has been a long time since, but that is my recollection.

Q. Well, will you give the names of some whose opinion

93 was not that it was better to assess, as provided by the syndicate certificate? A. I cannot.

Q. Do you recall whether or not that question came up at any of these meetings? A. I cannot now recall whether it did or not.

Q. General, you have testified relative to the large note here, dated

January 28, 1898, for $2378.79 payable to your order, one year after date, signed by Johnson and Croissant, trustees. You have testified that this note was given partly to reimburse you for advances on account of the syndicate, and partly to reimburse Johnson and Croissant who signed the note for alleged advances they had made. Will you kindly state how much of that note was given for your benefit, and how much for the benefit of Johnson and Croissant? A. The amount for my benefit was the amount paid by me on the two notes endorsed by me with, I believe, the interest up to the time of the making of the large note. The balance, I understood, was for the benefit of Johnson and Croissant.

Q. Now, as I have understood your testimony, the two smaller notes bearing your endorsement were given by Johnson and Croissant to you for the purpose of raising money to be applied to these interest and other charges against the syndicate, and that you had to make those notes good at the bank, and that they are, therefore, a personal charge of yours against the syndicate. Do you make any claim now against the syndicate on behalf of this large note,
94 which you say was given to cover the amounts of those two smaller notes? A. When this larger note was given the conditions were as I have stated, that a part of the amount of the note was due to me, and the balance was due to Croissant and Johnson. I so understood it. And upon the collection of the amount I should feel bound to pay over to those gentlemen the part belonging to them.

Q. My question was, General, whether you made any claim against the syndicate on account of this large note? A. As the note was made in my favor for the purposes which I stated, I suppose I stand in the position of asserting the claim for that amount.

Q. Do you mean to say that you claim the difference between what is said to be due Johnson and Croissant and the face of this note, and also claim amounts embodied in those two smaller notes, which I certainly understood you to have testified to a moment or so ago was really covered by this larger note? A. I don't know that I can make my meaning any clearer. Perhaps I might do so by discriminating about the word "claim." The note is payable to me. It is so made. When it is paid I should divide the proceeds, as I have stated, part of it being due to me as my personal property, and the rest to Croissant and Johnson, or their assigns, or whoever rightly holds under them.

Q. Now, I certainly understood you to testify, General, that the amount due you in this large note was to cover the amounts
95 stated in these two smaller notes. Now, is that true? A. That is true in part. It is to cover the amount due me, and the amounts due the other parties also.

Q. Did you have any personal knowledge of this indebtedness to Johnson and Croissant, which you state you embodied in this large note of $2378.79? A. Yes, I think I may say I have personal knowledge of it.

Q. Well, in round figures, as I understand your testimony, the

amount parceled to Johnson and Croissant in this note would be about $1200? A. Well, somewhere in that neighborhood.

Q. Will you state what items you are acquainted with for which Johnson and Croissant are entitled to this reimbursement? A. After so long a time, I am unable to state the items.

Q. Then, as a matter of fact, you have no personal knowledge of any such items? A. I have no recollection at present as to the items.

Q. You never endorsed or transferred that large note to any one, did you? A. I did not.

Q. Do you recollect that the three acre tract referred to in your testimony was sold under the deed of trust upon this note for
96 $2378. of which Giesy and Warner were trustees? A. I remember there was an attempt to sell it.

Q. Do you recollect that a Mrs. Davis, through her attorney, Mr. Leighton, called upon the trustees to sell this property because of her unpaid interest in this note? A. I do not.

Q. Do you recall who it was that called upon the trustees, Giesy and Warner, to sell that three acre tract, because of the non-payment of this note? A. I do not now remember.

Q. You do not? A. I do not remember.

Q. Don't you know whether you did or not, General? A. I cannot tell now. No, I do not remember.

Q. Then, if any one other than yourself called upon the trustees Giesy and Warner to sell the three acre tract because of the non-payment of this note, how do you account for their having any interest in this note, when it was in your possession, had not been endorsed by you or assigned by you to any other person?

Mr. DONALDSON: I object to this question as being an incorrect statement of the testimony, and as also being a deduction on the part of the counsel. The witness has already testified that he cannot remember whether he called upon the trustees to sell or not, and if he did not, whether anybody else did.

A. I do not feel called upon to account for it.
97 Q. Well, can you account for it?

Mr. LEIGHTON: I object to the further line of this examination. It is not responsive to anything brought out in the direct examination. It is not responsive to the issues here.

Mr. DONALDSON: It is calling for a deduction on the part of the witness also.

Mr. LEIGHTON: Yes; calling for a deduction rather than a fact.

Mr. EVANS: I will state that there has been some very peculiar and apparently unbusinesslike proceedings upon the part of the trustees and certain members of this syndicate, and that there should be no objection upon the part of any member who has knowledge of the facts being perfectly free to disclose them.

Mr. LEIGHTON: I don't want that speech to go into the record. You are not now making a speech for the benefit of the court, are you?

Mr. EVANS: I would like that question to go into the record.

A. I suppose the proceedings were properly taken, and I cannot say now that I had no part in the matter, and certainly not that anyone else having an interest in the matter did not take part.

Mr. LEIGHTON: I want to offer in evidence the nine exhibits filed with the complainants' amended bill, being Complainants' Exhibits Nos. from 1 to 9, both inclusive. I also offer in evidence a copy of the plat filed with the complainants' first original bill.

98 Mr. EVANS: No objection.

Mr. LEIGHTON: I further offer in evidence the Equity proceedings No. 16,612, Starkweather against Croissant and others, the amended bill and the proceedings and the decree in that case.

Mr. EVANS: What do you cover by the word "proceedings?"

Mr. LEIGHTON: Not the evidence; nothing but the pleadings, of course. I also offer in evidence the pleadings and proceedings, including the amended bill and decree in the case in Equity cause No. 20,205, being the case of Starkweather against Jenner and others.

Mr. EVANS: I wish to note an objection to this omnibus method of lumbering up this case with a great deal of matter which is absolutely irrelevant, immaterial and incompetent to the issues to be tried under the allegations of this bill, and I will move to strike out at the hearing such portions of the papers so offered as may *be* appear to be incompetent, immaterial and irrelevant.

(Without concluding the examination of the witness, an adjournment was here taken until tomorrow, January 18th, 1905, at 3 o'clock p. m.)

99 WEDNESDAY, *January* 18*th*, 1905—3 o'clock p. m.

Met, pursuant to adjournment. Present: Benjamin F. Leighton, Esq., Solicitor for the complainants, Richard P. Evans, Esq., Solicitor for certain defendants, and the defendants Starkweather and Jenner *in propria persona.*

Whereupon ELLIS SPEAR, having been heretofore duly sworn, resumed the stand for further

Cross-examination.

By Mr. EVANS:

Q. General, in your testimony given in Equity cause No. 20,360, in which the sale of the three acre tract under the deed of trust given to secure the payment of the notes you have been testifying about was set aside by the Equity Court, upon the ground that the trustees had no such authority to give such notes, you state, in answer to a question under cross-examination, the following: "Let me say that the note was made payable to me originally, and the deed of trust was made without my knowledge. It was not at my suggestion that that was done. The papers were made out and I was advised of it afterwards. I assented to it." Now, can you say at this time whether or not that these notes—this particular note given to yourself and the deed of trust was made because of and subsequent to

the action of the syndicate at a regular meeting of the stock-
100 holders? A. I cannot state positively about their direct action on that matter. That is, the direct action of the syndicate, but I suppose it was. I don't remember the details of the transaction. I understood that it was by direction or acquiescence certainly of the syndicate. It was a part of the original transaction. The syndicate authorized the giving of the notes which the large note was to cover. I had paid the notes which I had endorsed and which had been authorized by the syndicate, and this large note was for the purpose of repaying me, or securing me, and the others who had also advanced money in accordance with the authority of the syndicate.

Q. It is shown in that equity cause, 20360 that there were two other notes secured by that deed of trust, one given to a party named Gross and one given to a Mr. Jenner. Did you have any knowledge at the time of those particular notes? A. Probably I did, but I do not now remember it. I recall something about Mr. Jenner in that matter, and he advanced some money for the syndicate, but it is rather faint in my mind at this moment.

Q. Do you recall, or did you have any knowledge of the fact that the note given to Gross was given under cover of his name for the benefit of Messrs. Warner and Giesy, the trustees mentiond in the deed of trust? A. I may have known it at the time, if it was a fact. I do not now recall the matter definitely. I remember that Warner was mixed up in the matter some way.

101 Q. Now, I will ask you, General, if you were present at any meeting of the Crescent Heights Syndicate, or do you know of any such meeting, at which the stockholders authorized the trustees, Johnson and Croissant, to make this note payable to your order, largely for the benefit of the said trustees, and to make that note payable to the order of Gross for the benefit of Warner and Giesy, the trustees mentioned in the deed of trust? A. I don't remember being present at any such meeting.

Q. Can you state the reason why the course formerly pursued by the trustees in giving their notes payable to their own order as individuals, and endorsed to yourself, was not followed in this instance, instead of making a note for their own benefit under cover of your name? A. I don't remember any discussion about that matter. I know only this, that I had advanced money for the syndicate, and that they had, and that this note was given for the purpose of securing us in the payment of the money due us—the money which had been used for the benefit of the syndicate.

Q. As an original member of the syndicate, you had knowledge, I presume, of payments made for the syndicate shares issued to the various stockholders? A. I had knowledge, and I remember that I paid for the certificate issued to me, $2,500. in cash. I don't remember as to the others.

102 Q. Have you any knowledge as to the total amount of money received by the trustees from the sale of these syndicate shares? A. I don't remember now what it was.

Q. Have you any knowledge as to the application or disposition of the funds received through that source? A. No personal knowl-

edge. I was not the agent by which any of the business was transacted?

Q. These authorizations by the syndicate which you have spoken of, General, can you state whether or not these meetings were held after issue of notice to all of the stockholders, or were they sort of informal meetings, by way of several of the stockholders' meetings at your office, or elsewhere, and deciding that the exigencies of the occasion necessitated the giving of these notes, and one thing and another, to carry on the syndicate? A. I remember that I got notice of such meetings, and the meetings were always called at one place, not at my office. As to the notices of the other parties, I don't know.

Q. Can you say of your own knowledge that a majority of the stock was represented at the meeting that you speak of, or any others? A. I was just about saying that the majority of the stock was always represented at the meetings; how they came there, whether they happened in, or whether they got notice, I have no personal knowledge.

103 Q. In answer to a question at the commencement of this cross-examination, you stated, General, that you were unable to give the names of any persons present at these meetings. How can you now say that a majority of the stock was represented, if you can't recollect any of the persons who were present? A. I do not undertake to explain the mental qualifications. I remember, for it was an important matter, that a majority of the stock was present when we held meetings and transacted business. Did I say yesterday that I didn't know anybody who was present?

Mr. LEIGHTON: I don't recollect such evidence. I don't know whether the record shows it or not.

A. (Continuing:) I may say, then, that I recall that Mr. Parker was present; I know Mr. Jenner was always there, and I was there. I cannot recall the names of the other parties. My memory of names was always bad, and seventy years have not improved it.

Q. Can you state how many shares of stock Mr. Jenner, Mr. Parker and yourself owned at the time you have testified about? A. I cannot. I had one share.

Q. Did not constitute a majority of the stock, did it? A. I don't know. I don't mean to be understood as saying that there were no others present excepting Mr. Parker and Mr. Jenner and myself. I meant to say that those are the names that I now recall.

Q. You know whether or not the three acre tract you have testified about has become more valuable since the time of the

104 giving of that note, in January, 1898?

Mr. LEIGHTON: The question is objected to as not responsive to anything brought out in the direct examination, and because it is immaterial to this issue.

Mr. EVANS: Mr. Spear has already endeavored to testify as to values of property in that section. It is responsive to questions upon the direct examination.

A. I am not prepared to say that it has become more valuable;

possibly it may have. The conditions have changed in some respects, perhaps for the better, and not in others. It is a matter of conjecture.

Q. From your acquaintance with the locality to which you have already testified, I presume you know that two additional street railway lines have approached near this property; that there has been a large amount of building going on in this vicinity during this period, and that the Capital Traction Company have purchased property just beyond this property upon which to locate the terminus of their line in this extension; that 14th street, which binds this property on one side, is to be widened, the preliminary steps having already been taken? A. A part of that statement is not true, at least not within my knowledge. The Metropolitan line, or what is called the Connecticut Avenue line, has been extended out to Park Street. This property is not accessible, however, at present from the terminus of that line, any more than it was before. In fact, I think you may say properly that it is not accessible. I don't know anything about the Capital Traction having bought any property anywhere in the neighborhood of this property—the three acres, nor do I know that the 14th street extended will border upon that property, I mean the three acres. In fact it will be, I think, considerable distance from it.

105

Q. Do you know that the 16th street boulevard, as they term it, has been extended almost to this property, and is to be put through to bind it on the 16th street side? A. Well, I know something about the 16th street extension. The fill is made within about two hundred feet, I should say, of the old Fourteenth street road, and it is, I should think, fifty feet high there; not usable anywhere near, and there is an enormous chasm between the terminus of the unfinished embankment and the syndicate property. What has been done so far is no benefit to the property at all. There is a prospect that when it is extended it will benefit that property. When that will be done, I don't know. I wish I did.

Q. Are these fills you speak of any greater than the fills that were required along the Connecticut Avenue extension, where property has been brought into the market? A. I don't know of my own personal knowledge about the magnitude of the fills on the Connecticut Avenue line. I can't say.

Q. Then, so far as your personal opinion goes, you can't say whether or not these various improvements — which I have spoken tend to increase the value of the property, or otherwise? A. They do not increase the value of the property at present. That is, it is still a matter of speculation. I know of no immediate advantage to the property. The expectation that they will, sometime or other, within a reasonable time, be completed, may be a better basis for expectation of the ultimate rise in the valuation of the property. Those are nice questions about property. You could not borrow any more money on the property now, I think, on account of the 16th street extension, so far as it is completed.

106

Q. In your direct examination you spoke about the sale of the seven acre tract. In your opinion, will these street extensions and

improvements spoken of increase the value of that portion, or what was the syndicate holding? A. Well, I should have rather a greater expectation as to that property, I mean the seven acres, by reason of the extension of 16th street. The completion of it will benefit that property; no doubt about that. When it will be done, as I say, I haven't any idea whatever. It seems difficult to get an interest in extending that street, and, as for the three acres, I think that is not so immediate—not likely to be so immediate and directly affected as the seven acres, but it would also be benefited by the extension of 16th street completed.

Q. In Equity cause No. 20,360 you testified as to a circular letter signed by yourself and Herbert W. T. Jenner, dated Washington, D. C., February 18, 1899, and reading as follows:

107 "Crescent Heights Syndicate.

The present status of this syndicate is as follows: The assets consist of about three acres of land on Spring Road. The liabilities are Spear note, about $630; Jenner notes, about $770; Warner note, about $600; arrears of taxes, with penalities, about $200. All these notes are secured by a deed of trust, which is now overdue and the land can be sold out at any time at the request of any note holder. The trustee Croissant has also a claim for money paid on behalf of the syndicate, but the attorney for the syndicate reports that there is a shortage in the accounts of the trustees Croissant and Johnson of about the same amount; so this claim need not be considered at present, as one about off-sets the other. The stockholders to whom this circular letter is sent are respectfully asked to answer the following questions in writing, and to address their replies to Ellis Spear, Equitable Building, Washington, D. C.:

1. Are you willing to have the property sold out under the deed of trust, so that you lose all further interest in the matter?

2. Are you willing to pay an assessment of $30 a share to settle the arrears of taxes, the interest on the notes, and a curtail on the Warner note?

3. Are you satisfied with the present trustees, Croissant and Johnson, or, if not, are you desirous that the undersigned be made substitute trustees for the purpose of making and enforcing assessments and managing the property in the future?

108 The undersigned are stockholders, and are willing to extend their notes without curtail in cash, if the interest on them be paid, and if they can get the Warner note extended, it courtailed one-third, and the interest paid.

The undersigned also think that the three acres of land is worth the incumbrance on it; that it will be worth much more in the course of some years, and that it can be carried by small semi-annual assessments sufficient to carry the taxes, interest on notes, and could take up the Warner note in three annual payments.

This assessment will release the property for six months, at the expiration of which time further assessments will be necessary only

to pay the semi-annual interest, unless further payments be required on the Warner note; in any event, only for small sums. The undersigned now believe that the property is worth more than the incumbrances, and will increase in marketable value henceforth."

A certified copy of which is filed in said cause. Will you state what was the occasion for your using the language that the "undersigned be made substitute trustees for the purpose of making and enforcing assessments?"

A. I suppose it was for the purpose of making and enforcing assessments, an alternative proposition, the main purpose of which was to conserve the property for the benefit of the syndicate.

Q. Well, then, it is to be gathered from that language that the trustees, Johnson and Croissant, had refused or neglected to
109 either make or attempt to enforce such assessments? A. I don't know that they had refused. I cannot say as to that. It seems certain that they had not made any assessments.

Q. The date of this letter was February 18, 1899. The date of this note for $2478.79 is January 28, 1898, and it was payable one year after date. Consequently, when this letter was issued, this note was nearly a month overdue, and in this letter you state the liabilities as the Spear note, about $630, Jenner notes, about $770, and the Warner note, about $600, besides arrears of taxes of $200, and you also mention a claim of the trustee Croissant, but state that the accounts of the trustees, as stated to you by the attorney for the syndicate, show a shortage of about the same sum. Now, then, do you still persist in the statement you made during this cross-examination that if this note was paid you would pay over to Johnson and Croissant, trustees, the sum of about $1200, when in February, 1899, after this note became due, you cited in this letter what were the entire liabilities at that time, and omitted to cite this amount of $1200 as being due to Johnson and Croissant, trustees? A. I testified as to the large note for $2300 and odd dollars; that it was given to secure my claim, and that of Croissant and Johnson. That was my recollection. As to the statements made in the letter referred to in the question, it may have been some mistake; I don't know. I signed that letter, I think, on information and
110 belief at that time; there may have been some error. I cannot testify as to that with confidence, nor am I able to reconcile the differences.

Q. Does not it appear, General, from your statement in this letter that the amount covered in this note to you for the trustees was really, as a matter of fact, offset by indebtedness from the trustees of the syndicate on account of this shortage you speak of? A. That would so appear. As to the statements in that letter, I signed the letter on the best information I had at that time, and belief, and I did not myself prepare the letter, but I remember some such letter was put out in the effort to get the stockholders to do something to save the property. I know that I was not pressing for my claim, but while, of course, I desired to get my money back, I was interested

first in having the interest of the stockholders safeguarded as far as possible. I was not actively engaged in the matter, because I did not have time to attend to it, other than to sign that letter.

Q. As a matter of fact, at that time, General, were you not very much dissatisfied with the conduct of this syndicate by the trustees Johnson and Croissant, and was it not your understanding at the time that they were largely indebted to the syndicate for moneys secured through the sale of these syndicate certificates? A. I was certainly dissatisfied with the conduct of the trustees. As to their indebtedness, I don't know of my own personal knowledge; that is, knowledge which could be derived only from an examination
111 of the books. My recollection is that the statement was made on the authority of the attorney Giesy, I think it was—a statement as to the indebtedness of the trustees.

Q. You have no personal knowledge as to the amount of money that the trustees had received through the sale of the stock? A. No.

Q. Then, you have no personal knowledge as to whether those moneys claimed by the trustees to have been personally expended in behalf of the syndicate, and for which you negotiated their paper, was properly due them or not? A. No personal knowledge. I never examined the books myself.

Q. Do you know whether their books were ever audited by any committee appointed by the syndicate? A. I don't know.

Q. I show you a paper marked "Memorandum," pinned to this note to which you have been testifying, and ask you if that is your signature? (Showing witness paper.) A. (After examining same.) Yes, it is.

Q. Will you please read that, General? A. Read the memorandum?

Q. Yes. A. (Reading.) "Memorandum: This note is given in payment of two notes of Johnson and Croissant, trustees, endorsed by me. The note within of said John O. Johnson and J. D.
112 Croissant, trustees, amounting to $2378.79, is to be held by the Columbia National Bank for my benefit, and not to be surrendered to said trustees without my consent." Signed by me, dated March 2, 1898.

Mr. EVANS: In connection with the testimony of the witness, I offer that memorandum in evidence, as a part of that note transaction.

Q. At the sale of the seven acre tract which the syndicate owned, as to which you have testified, I understand that it was bought in by Mr. Herbert W. T. Jenner, acting as agent for yourself and others, who were at the time members of the syndicate. Is that true? A. Well, that is true so far as I was concerned. I put up some money necessary to purchase the property; I don't know about anybody else. I understood, that is my recollection is that there were others mentioned, but I don't remember. I think the property was sold under the blanket mortgage.

Q. I show you a paper marked "Examiner's Exhibit J. E. McN. 7," filed in Equity cause No. 20,360, purporting to be a certified copy

of a power of attorney given to Herbert W. T. Jenner, trustee, and signed R. G. Campbell, Ellis Spear and E. S. Parker, and ask you whether that is the form of the authorization given to Mr. Jenner for the purchase of that property? (Handing same to witness.)

Mr. LEIGHTON: I object to the question, as it is not responsive to anything brought out in the direct examination, and has
113 no bearing upon the question here. The matters therein set out were adjudicated in Equity cause 20,205, which has been offered in evidence in this cause.

A. (After examining same.) I don't know. I had forgotten about this paper.

Redirect examination.

By Mr. LEIGHTON:

Q. General, I want to ask you one or two questions on redirect. Can you state who called these meetings of the syndicate as to which you have testified—whether they were called by the trustees of the syndicate, or by whom? A. I cannot remember.

Q. Do you recall at what place the meetings were customarily held? A. They were held in the directors' room of the Columbia National Bank.

Q. When 16th street is extended, will this property—this three acre tract that we have under discussion, be on grade? A. Not all of it certainly.

Q. Will any of it be on grade? A. Well, I cannot say as to the upper part. There may be an edge of it on grade, but I am very doubtful.

Q. Can you give an approximate idea of what will be the difference between the grade of the street and the lot when it is extended, if it ever is? A. No, I cannot tell.

114 Q. Do you know why the shareholders of the syndicate had lost interest in its affairs, and were declining or were unwilling to be assessed to pay the expenses accruing from time to time.

Mr. EVANS: I object to that question, on the ground that the cross-examination has not called from the witness anything showing that the shareholders were unwilling to be assessed.

A. The discovery of the blanket mortgage discouraged me, and I suppose it discouraged others, and my recollection is that the shareholders did not all cooperate I think Mr. Starkweather was not helping any, and, in fact, my recollection is that some part of the time he was rather a cause of discouragement.

Q. Do you know whether or not the filing of the suit, 16,612 by Mr. Starkweather against Croissant and Johnson as trustees of the syndicate had anything to do with the feeling among the shareholders of depression?

Mr. EVANS: I object to that as being absolutely incompetent and irrelevant, and not responsive to any question asked the witness on cross-examination.

A. It did with me. It was, of course, discouraging, but I cannot say now as to the others.

Recross-examination:

By Mr. EVANS:

Q. You mean to say, General, that you subscribed to the shares of this syndicate and paid your money, without knowing the
115 condition of the title to the property? A. I would not say that I did it without knowing as to the condition of the property. I took the assurance of the trustees, and I understood that they had like assurances from Mr. Starkweather that the property was clear, and I had confidence in them. I did not go further.

Q. Don't you recollect, General, that the subscription agreement signed by you mentioned the incumbrances, including the blanket trust, and that it especially exempted Mr. Starkweather from any payment on account of those incumbrances, and assumed the incumbrances as a part of the consideration to be paid Starkweather for the property?

Mr. LEIGHTON: The question is objected to, as the witness is entitled to the production of the paper, and to examine it before he can be called upon to testify as to its contents.

Mr. EVANS: Well, we will suspend the cross-examination of the witness until we can procure that paper.

The WITNESS: Well, I will answer the question. I have no such recollection. I should be glad to be assured that the thing was so, because I have carried the impression, unpleasant to me, that I was not advised as to that blanket mortgage, and if it were so I should be relieved of that unpleasant impression.

Q. Do you not recollect, General, of being advised by the trustees that there was a blanket mortgage covering a number of
116 pieces of property, and resting upon the seven acre tract, but that the same could be released so far as that particular piece of property was concerned by the payment of $5000 to the holders of the trust? A. I don't remember that. It may have been so, but I, as I have said before, have carried the impression in my mind that there was no incumbrance on the property, or nothing substantial.

Q. Have you any knowledge as to whether the contract of subscription to the purchase of this property from Mr. Starkweather was carried out, so far as it provided for the payment of the purchase money to Mr. Starkweather? A. I have no personal knowledge on that matter.

Q. Well, you can't state as to whether the stockholders were more properly dissatisfied with Starkweather than Starkweather could have been dissatisfied with the stockholders, can you? A. As to the balance of dissatisfaction, I am unable to state. I have no knowledge of Mr. Starkweather's feelings about the matter.

Q. As a matter of fact, General, don't you know that there was an attempt or a design to secure these properties from Mr. Starkweather

without complying fully with the terms of the contract of purchase made with him?

Mr. LEIGHTON: The question is objected to, as it assumes a condition of fact which has not been established by the proof.

117 A. I have no knowledge as to this matter. I certainly would not have been a party to any attempted injury to Mr. Starkweather.

Q. Did you make any attempt personally, and with the other members of the syndicate, to avoid the sale of the seven acre tract and preserve that property to the syndicate at the time that it was bidden in by Mr. Janner, as agent for yourself and others? A. I was not personally active in the matter at all. I had no time for such matters, and I don't know about any such effort. I understood that there was no way of avoiding a sale, and I understood also that it would involve a loss of all our interests in the matter.

Q. Do you not recall that that seven acre tract was sold because of the non-payment of overdue interest, amounting to about $226? A. I know nothing as to the amount.

ELLIS SPEAR.

Subscribed before me this — day of January, 1905.
J. ARTHUR LYNHAM, *Examiner.*

(At this point an adjournment was taken until Monday, January 23rd, 1905, at 10 o'clock a. m.)

MONDAY, *January* 23, 1905—10 o'clock a. m.

118 Met, pursuant to adjournment. Owing to the non-attendance of Mr. Leighton, the Solicitor for the complainants, an adjournment was taken until further notice.

FRIDAY, *January 27th,* 1905—2:07 o'clock p. m.

Met, pursuant to notice, to resume the taking of testimony on the part of the complainants.

Present: Benjamin F. Leighton, Esq., Solicitor for the complainants; R. Golden Donaldson, Esq., Solicitor for the defendant trustees; Richard P. Evans, Esq., Solicitor for certain defendants, and the complainant Jenner and the defendant Starkweather *in propria persona.*

Whereupon MARY E. S. DAVIS, called as a witness on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. Mrs. Davis, do you know John D. Croissant and John O. Johnson? A. Yes, sir, I know Mr. Johnson casually, and, of course, Mr. Croissant is my brother-in-law.

Q. I show you a note, which has been offered in evidence, made by Messrs Johnson and Croissant, as trustees, bearing date
119 January 28th, 1898, for $2378.79, payable to the order of Ellis Spear. State whether or not you have any interest in that note? (Handing witness note.) A. (After examining same.) Yes, sir; I have fifteen hundred dollars interest in this.

Mr. EVANS: I object to the question and to the answer of the witness, as being incompetent and irrelevant at this time. As I understand this suit is one in the nature of a dissolution of partnership and partition of partnership assets, and this line of inquiry would be competent before the Auditor, in case the court should order an account to be taken, but at this stage of the proceedings it seems to me it has no bearing upon the issues involved in this bill.

Mr. LEIGHTON: When the case shall come before the Auditor this evidence now taken will be as available as though taken before him for the purposes suggested by counsel.

By Mr. LEIGHTON:

Q. State how you acquired that interest in the note? A. By purchase through Mr. Croissant, who advised me to make the investment, and said that the property was worth it and I would soon get it out, which has proved to be quite difficult.

Q. Has any part of the sum that you so advanced to Mr. Croisbeen paid to you, or secured in any manner? A. No, it has not.

120 Cross-examination.

By Mr. EVANS:

Q. What relation did you say you were to Mr. Croissant? A. He is my sister's husband; he is my brother-in-law.

Q. When did you first see that note? A. Why, I don't think I saw it until a short time ago. I did not regard it as necessary to see it.

Q. Did you ever have it in your possession? A. No, sir. It was in the possession of the Columbia Bank at the time that I made the investment.

Q. Whom did you pay that $1500 to? A. It went to Mr. Croissant. He made the investment for me.

Q. How did you pay him, by check? A. No, sir.

Q. Then, how did you pay him? A. It was by cash.

Q. Where did you pay him? A. I don't remember now. I presume at the house.

Q. Where? A. Why where we were living. I have always lived with them, Mr. Evans.

Q. In this city? A. Yes, sir.

Q. Don't you live in Pennsylvania? A. No, sir; never lived a day in Pennsylvania in my life.

121 Q. Then you and Mr. Croissant live in the same house together? A. Have for the last twenty-one years.

Q. And you paid him this money in cash? A. Yes. This money was a cash transaction.

Q. When did you pay it to him? A. I could not give you the date. It was when he invested it.

Q. You don't know whether it was before the commencement of this suit, or not, do you? A. Why, it was before, sir.

Q. How long before? A. It was at the time that the bank held up his bank account because of the judgment. The bank account held up this note. You can get the date, then, if this is what you would like to have. Mr. Croissant was sued because he was the only trustee, as I understand, that had any money that they could get hold of.

Redirect examination.

By Mr. LEIGHTON:

Q. You spoke of holding up a bank account. Whose bank account do you mean? A. Mr. Croissant's.

Q. Had he or not been sued by the Columbia Bank? A. I don't know, sir. I know he said that they were holding up his bank account on account of this trusteeship.

Q. State whether or not you have property in your own
122 right? A. Yes, sir.

Q. Is it a recent acquisition, or have you had it for a good many years? A. Oh, I have had it for about twenty years, some of it, and some of it for a little less.

Mr. EVANS: I can't see the relevancy of these questions and answers, and therefore I object to them.

Mr. LEIGHTON: I don't either.

MARY E. S. DAVIS.

Subscribed before me this 9th day of October, 1905.

J. ARTHUR LYNHAM, *Examiner.*

Thereupon HERBERT W. T. JENNER, one of the complainants, and a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. State your full name, residence and occupation? A. Herbert W. T. Jenner; patent attorney.

Q. Where do you reside? A. At the Lincoln Hotel.

Q. Are you one of the complainants in this suit? A. I am.
123 Q. I show you a bill and ask you to look over those names and state whether you know the parties to the suit. (Handing witness bill.) A. (After examining same.) I know all the parties to the suit with the exception of the Campbells.

Q. Are you a member of the Crescent Heights Syndicate? A. I am.

Q. An original member, or did you become interested after the syndicate had been organized? A. I was an original member.

Q. Can you state to whom the shares of stock or certificates were issued by the trustees? A. Twenty-four were issued altogether.

Q. And can you state to whom, and who now holds them? A. Yes. I have a list of the names.

Q. Wait a moment. You can examine the bill and state whether the names of the present owners and the numbers of shares that they hold are correctly set out in the bill? A. They are.

Q. What did you know of the hypothecation of the four shares held by Mr. Starkweather with the defendants Yerkes and Baker?

Mr. EVANS: I object to that question as being irrelevant to any of the issues involved by this bill.

A. I have some knowledge, derived from the testimony taken in Mr. Starkweather's various suits.

124 Q. And from the evidence of Mr. Starkweather himself? A. From the evidence of Mr. Starkweather and of Mr. Baker.

Q. Well, state what you know of it.

Mr. EVANS: I object to this question, and to any answer that the witness might give, as it will be clearly incompetent. If Mr. Starkweather and Mr. Baker have testified as stated by the witness, their testimony is a matter of record and can be proven by reference to it, and it will be clearly incompetent to substitute therefor the witness' recollection.

Q. State whether or not you were present when Mr. Starkweather testified in respect to the ownership? A. I was.

Q. Well, state what the evidence was, or what he stated his ownership or his present interest in those shares to be? A. Mr. Starkweather testified that he had given four shares of stock to the firm of Yerkes and Baker as security for a loan.

Q. Was the amount of the loan stated?

Mr. EVANS: I interpose the same objection to all these questions on this line.

A. I don't remember.

Q. Did Mr. Starkweather claim to have an interest in other shares, except these four held by Yerkes and Baker? A. He did. He claimed to have an interest in three which now are in the name of Robert G. Campbell.

125 Q. I show you two notes purporting to be signed by Johnson and Croissant as trustees, dated January 28th, 1898, one for the sum of $180, and the other for the sum of $535.35, both payable in one year from date to your order, and ask you to state whether or not you are familiar with the signatures of Johnson and Croissant? (Handing witness notes.) A. (After examining same.) I am.

Q. How did you become familiar with them? A. From seeing them on the stock certificates.

Q. Did you ever see them write? A. I have.

Q. I show you those notes and ask you to state whether or not those are their signatures? A. These are their signatures.

Q. Are or not these notes still held and owned by you? A. They are.

Q. Has anything been paid on account of them? A. Never.

Q. Did you or not advance the full amount indicated by the face of those notes for the benefit of the syndicate?

Mr. EVANS: I object to this question, upon the ground that it is incompetent, irrelevant and immaterial at this time; that it is premature to go into an inquiry as to the interest of Mr. Jenner, or other stockholders at this time, as that can only be properly testified to before the Auditor in a statement of account and distribution, if so ordered by the court.

126 A. The larger note was given me in settlement of all claims owing me by the syndicate. The smaller note I purchased from S. Herbert Giesy.

Q. Can you give the items that go to make up the larger note for which you hold claims against the syndicate? A. The larger note was given me in consideration of a deed to the syndicate of certain small lots and portions of lots which had previously been deeded to me by the syndicate trustees, and as a settlement of all indebtedness owing me up to the date of the transaction.

Q. Was there or not a settlement of accounts between yourself and the trustees of the syndicate at the date of the giving of that note? A. Yes.

Q. It appears upon the face of the smaller note that you are the payee. How is it that you say you purchased it from Giesy? A. The note was secured by a deed of trust, and Mr. Giesy was one of the trustees under that deed of trust; in consequence of which the note was payable to me—made payable to me as an accommodation, and I endorsed it over to Mr. Giesy, without recourse to myself, and delivered it to him.

Q. State whether or not that is the signature of Giesy to the back of the note? A. That is Mr. Giesy's signature.

Q. On the back of each of these notes is this endorsement:

127 "We, this 27th day of December, 1901, promise to pay the within note," purporting to be signed by John O. Johnson and J. D. Croissant, trustees. State whether or not those are the signatures to that memorandum of the defendants Johnson and Croissant to those notes? A. They are.

Mr. LEIGHTON: I offer in evidence the notes themselves and the indorsements, which I have just read, on the back of them, and ask the Examiner to make copies of them for the record.

(The notes referred to are marked by the Examiner "For identification H. W. T. J. Nos. 1 and 2" and copied into the record, aggreably to the request of counsel, as follows:)

$180. WASHINGTON, D. C., *January* 28, 1898.

One year after date, for value received, we promise to pay to Herbert W. T. Jenner or order, the sum of One Hundred and Eighty Dollars, at — with interest at the rate of 6 per centum per annum until paid; payable semi-annually.

JOHN O. JOHNSON, *Trustee.*
JNO. D. CROISSANT, *Trustee.*

(In left hand corner of note.)
Secured by deed of trust on pts. of 44 Lots in J. C. Lewis subdivision.

S. HERBERT GIESY,
BRAINARD H. WARNER, *Trustees.*

128 (Endorsements on back of note:)
Pay to the order of S. Herbert Giesy, without recourse to me, Herbert W. T. Jenner.

S. HERBERT GIESY.
HERBERT W. T. JENNER.

We this 27th day of Dec. 1901 promise to pay the within note.

JOHN O. JOHNSON, *Trustee.*
J. D. CROISSANT, *Trustee.*

$535.35. WASHINGTON, D. C., *January* 28, 1898.

One year after date, for value received, we promise to pay to Herbert W. T. Jenner or order, the sum of Five Hundred and Thirty Five and 35/100 Dollars, at — with interest at the rate of 6 per centum per annum until paid; payable semi-annually.

JOHN O. JOHNSON, *Trustee.*
JOHN D. CROISSANT, *Trustee.*

(In left hand corner of note.)
Secured by deed of trust on pts. of 44 Lots in J. C. Lewis Subdivision.

S. HERBERT GIESY,
BRAINARD H. WARNER,
Trustees.

129 (Endorsements on back of note:)
Herbert W. T. Jenner.
We this 27th day of Dec. 1901 promise to pay the within note.

JOHN O. JOHNSON, *Trustee.*
J. D. CROISSANT, *Trustee.*

By Mr. LEIGHTON:

Q. Are you familiar with this property, Mr. Jenner? A. I am.
Q. Have you seen it since 16th street has been extended—the work has been done on 16th street to its present point? A. I have not been there recently.

Q. Can you tell whether or not this three acre tract that is described in the bill will be upon grade when 16th street is extended? A. It will not.

Q. Above or below? A. It will be about fifty feet below.

Q. You may described the three acre tract, as well as you can, that is its present physical condition at the date of filing this bill. A. It is on the North side of Spring street, a rough piece of land which slopes from Spring street to a deep ditch, and the frontage of it is somewhat cut up by lots owned by colored people, and on
130 which they have built small frame houses.

Q. How many of those houses are there, do you know? A. I have never counted them. I should think about eight or nine.

Q. I will show you complainant's exhibit No. 1, which has been offered in evidence, purporting to be a plat delineating the outlines of the three acre tract, and ask you what are those pencilings in red ink along the Spring street frontage? (Showing witness exhibit.) A. (After examining same.) The lots indicated in red ink show the portions of the property which are not owned by the syndicate.

Q. What does the balance of the plat show? A. The balance of the plat shows the property owned by the syndicate.

Q. Have you had any experience in real estate matters in the District? A. I have.

Q. To what extent? A. Prior to the formation of the syndicate I had hardly any, but the syndicate property alone has been a great experience to me.

Q. State whether or not, in your judgment, the property is susceptible of division in kind among the shareholders, without loss and injury to them? A. It could not be divided amongst them in kind.

Q. Do you know who occupies those portions of the tract that is shown by that plat, which are not owned by the syndicate?
131 A. The names of the owners are stated in red ink on the plat.

Q. Are they white or colored? A. J. A. Murray is a colored woman; Jones is a colored man. I don't know the others.

Q. Don't know whether they are white or colored? A. I have been informed that they are colored, with the exception of Simms.

Mr. EVANS: I object to that answer, as to his being "informed."

Q. What is the character of those improvements on that property? A. With the exception of Mrs. Murray's house, they are tumbled down looking small frame houses; her house has been more recently built and is better.

Q. What effect, in your judgment, do those improvements have upon the value of the residue of the property—the vacant ground? A. They are undoubtedly detrimental.

Cross-examination.

By Mr. EVANS:

Q. Mr. Jenner, are these two notes you have testified to the notes that were secured by deed of trust under which the three acre tract was sold? A. They are.

Q. The same notes? A. The same notes.

Q. You have stated that this $535 was partly in consideration of the reconveyance by you of certain lots to the syndicate. Were those the lots and property with reference to which Equity cause 16,612 was filed, and during the progress of that case you made this reconveyance? A. They are the same.

Q. In your testimony in 16,612, you stated that you had given a very small consideration for those lots when conveyed to you by the trustees. Can you state now what that consideration was? A. I could not give the exact amount.

Q. Your testimony in 16,612, was of course, correct at that time? A. It was.

Q. Now, how much of this $535 note was given in consideration of this transfer by you? A. In one sense it might be said that the whole was. The arrangement was that I should redeed these lots to the trustees and should receive the amounts—all the amounts which I had paid to their order.

Q. Was that arrangement in writing? A. No.

Q. Well, who made the arrangement? A. Croissant and Johnson.

Q. You have stated that this note for $180 made payable to your order really belonged to S. Herbert Giesy? A. It did.

Q. And as a matter of accommodation to Mr. Giesy, who was one of the trustees under the deed of trust through which this property was sold, you consented that it should be made payable to your order? A. Exactly.

Q. Were Johnson and Croissant acquainted with these circumstances at the time they made this note? A. They were.

Q. And they coincided with it? A. I don't know what you mean by "coincided."

Q. Well, they concurred in this, then? A. They concurred in it.

Q. Was it their suggestion, or your suggestion, or Mr. Giesy's suggestion that this was done? A. It was not my suggestion.

Q. There was another note given, was not there at that time, which secured S. Herbert Giesy in another payment? A. No—oh, yes there was; yes.

Q. That was given to a man named Gross, wasn't it? A. It was.

Q. But that also belonged to S. Herbert Giesy? A. No, I think not.

Q. Well, then, did it belong to B. H. Warner, the other trustee? A. I understand that it belonged to B. H. Warner.

Q. Now, as a matter of fact, was not Mr. Giesy the real beneficiary under that note, and did not he transfer his rights under the note to B. H. Warner in a property transaction? A. No. Sometime previously a note for $500 had been given to Mr. Giesy by the trustees, and he had transferred that note for the $500 to Mr. Warner.

Q. But, Mr. Jenner, this note is for only $180. A. You were talking of the Gross note.

Q. Oh, the Gross note? A. Yes, that is what you were asking me about, the Gross note.

Q. Well, what was the consideration that Mr. Giesy paid for these notes to the syndicate? A. The consideration for the original $500 note was Mr. Giesy's services to Croissant and Johnson, trustees, up to the time when Mr. Starkweather filed his amended bill. The consideration for the smaller note made to my order was Mr. Giesy's services from the date of Mr. Starkweather's supplemental bill down to the date of the note.

Q. Well, what supplemental bill do you refer to? A. The supplemental bill in 16,612. I should have said amended bill instead of supplemental bill.

Q. Well, these notes, with others, were the notes secured by the deed of trust under which Warner and Giesy sold this three acre tract? A. They all came under the same deed of trust.

Q. And that sale was the sale which was set aside upon final hearing in this equity cause No. 20,360? A. It was.

Q. Did you have any knowledge of the larger note to which Mrs. Davis has testified at this hearing, made payable to the order
135 of Ellis Spear at that time? A. I had some knowledge of it.

Q. At the time it was made? A. I think so.

Q. Did you know at that time that the larger part of that note was for the benefit of Johnson and Croissant themselves, the makers of the note? A. I did. A portion of it was also for taxes.

Q. Well, as I understood the testimony given by General Spear to be in round numbers $1200 of that note was for the benefit of Johnson and Croissant, and something over $800 for his benefit individually. Now, what do you mean by a portion of the note was given for taxes? A. A portion of the note was for the benefit of Croissant and Johnson, trustees, and out of that amount they should liquidate the back taxes on the property.

Q. Then, as a matter of fact, the amount presumably due from that amount to Johnson and Croissant, had the note been paid, should have been applied by Johnson and Croissant to the liquidation of back taxes? A. They should do so, as trustees.

Q. Now, you have testified that you are one of the original members of the syndicate? A. Yes.

Q. What have been your holdings in certificates since you became connected with it? A. I purchased eight shares at different times.

Q. Your total holding at this time, then, is eight shares? A. It is.

136 Q. What did you subscribe for originally? A. Originally for two shares.

Q. How soon thereafter did you get the remaining six shares? A. Two I purchased from Starkweather, but I cannot remember the dates on which I purchesed them, and four I have purchased at a later date.

Q. Did you purchase those four from the trustees of the syndicate, or from outside parties? A. The last four I purchased from outside parties.

Q. Do you recollect what amount of money you paid to the trustees of the syndicate for the two shares you have testified you

purchased from them? A. The first share was given me in lieu of notes secured upon the property for $2,500. The second share I paid for in cash, giving the trustees over $2,500.

Q. Then, as a matter of fact, you paid the trustees more than the face value for those certificates? A. For the second ones I did.

Q. Now, have you any knowledge of the payments made by other subscribers to the syndicate certificates? A. I have knowledge from seeing the book kept by John O. Johnson.

Q. Well, from your knowledge obtained in anywise, can you state whether or not those certificates were paid for at par, or whether they were shaved? A. According to Mr. Johnson's books, they were all paid for at par and more than par, with the exception of those in the names of Starkweather, Croissant, Johnson and Sixbury.

137 Q. How many shares did Croissant have? A. He had one in his own name, and one in the name of Sixbury.

Q. How many shares did Johnson have? A. Two.

Q. Were those shares subscribed for by Johnson and by Croissant, or were they shares which were assigned to them by Mr. Starkweather? A. Mr. Croissant and Mr. Johnson each received one share as commission.

Q. And they were from Mr. Starkweather? A. I so understood it.

Q. Do you know how many shares were issued to Mr. Starkweather? A. I think eleven.

Q. You have testified that twenty-four shares were issued? A. Yes.

Q. What was the total number of shares? A. The total was thirty issued and not issued.

Q. Now, of these twenty-four issued shares, you say eleven were issued to Starkweather? A. I think so.

Q. That was on account of purchase money? A. I think so.

Q. And two of the Starkweather shares went to Johnson and Croissant? A. I don't think two of the eleven went to Croissant and Johnson. I think they were issued direct to Croissant and to Johnson.

138 Q. But were they not included in the eleven shares which Mr. Starkweather was to have had issued to him? A. No, I did not include them in the eleven.

Q. Well, then, do you mean to say that the syndicate paid Johnson and Croissant two of these certificates as a commission? A. No, Mr. Starkweather paid that.

Q. Well, how were these shares originally issued to Johnson and Croissant if they were Starkweather shares? A. They were issued by means of the signatures of Croissant and Johnson as trustees at the bottom of them.

Q. Were they authorized to do so by the syndicate? A. Not to my knowledge.

Q. I want to get this matter absolutely straight on the record, and, if there is no objection, I will exhibit to Mr. Jenner this stock book, and ask him as to whether he has testified correctly from his recollection, or desires to make any correction in his testimony, after

examining the stock book itself. (Handing witness stock book.) A. (After examining same.) I don't know of anything which I wish to correct at present.

Q. To be explicit, Mr. Jenner, I will ask you to examine the stubs of this stock book, and then to state whether or not you were correct in stating that eleven shares were issued to Mr. Starkweather,
139 and two shares issued direct to Croissant and Johnson on Starkweather's account, it being understood by the defendant Starkweather that the two shares held by Johnson and Croissant and received by them as a commission were two of the shares originally issued to him to the amount of eleven shares? A. (After doing as requested.) It seems from the stock book that the commission shares were not in excess of eleven shares—were not in addition to any eleven shares chargeable to Mr. Starkweather's account.

Q. From your examination of the stock book, can you say that the eleven shares were really issued to Mr. Starkweather, including these two to Johnson and Croissant, which you call the commission shares? A. No, but I think the share issued in the name of Sixbury was really one of Mr. Starkweather's shares, and I am not certain about the other in the name of Baker.

Q. You have testified as to your recollection of Mr. Starkweather's testimony in some of these cases. Don't you recollect that that has been testified to, that Mr. Baker bought this share originally from the syndicate, and then that Mr. Starkweather purchased it from him subsequently, paying him $200 advance? A. I don't know anything about what Mr. Starkweather paid him, or what his business arrangements were with him.

Q. I am talking about your recollection of the testimony now, Mr. Jenner, to which you have already testified in response to some questions by Mr. Leighton. A. I don't remember that part
140 of the testimony.

Q. Now, I would like to ask you whether you can state how many of these shares were issued and paid for at or above par? A. The shares to Parker, Barker, Sidney Johnson, Dyer, Spear, Peale, Jenner two shares, Stewart, Levengood, and Jenner for the benefit of McGlathery; I think cash was paid for all these shares. One of Mr. Johnson's shares was to be paid for in cash.

Q. From what you have stated, then, excluding the share issued to Mr. Baker, there were twelve shares paid for in cash? A. I make it thirteen shares should have been paid for in cash.

Q. That is exclusive of Baker's share? A. That is exclusive of Baker's share.

Q. The par value being $2500, these thirteen shares should have placed in the hands of the trustees $32,500? A. $32,500.

Q. And if Baker paid for his that would make it $35,000? A. It would.

Q. When did you acquire the last four shares you hold? A. The last four certificates were issued to me on June 9, 1902. I acquired them a short time previously to that date.

Q. Because of your interest in the syndicate, the amount of money

you had invested, you kept in pretty close touch with the
141 trustees, did you not, in their transactions of the business of the syndicate? A. After I had acquired four shares I did.

Q. Can you explain why it was that the trustees should be compelled to borrow money in order to carry on the syndicate, pay taxes, and so forth, when they had received in cash $32,500, or $35,000? A. I cannot undertake to explain that.

Q. Do you recall signing a letter in connection with General Spear, in which you made the statement that Mr. Croissant, one of the trustees, was indebted to the syndicate to about the same amount as they claimed the syndicate owed them?

Mr. DONALDSON: I object to that as being wholly immaterial, and as having no force to bind either of the trustees.

A. I remember signing the letter.

Q. That letter was issued after these notes, to which you have testified, became due and payable, were they not?

Mr. DONALDSON: Well, now, I object to any testimony in reference to that letter, or any other written document, unless the same is produced.

A. I think so.

Mr. EVANS: I will state that that letter, or a certified copy of the same, is on file as an exhibit in one of the equity causes in which Mr. Jenner and Mr. Starkweather are parties, I think in No. 20,360, and I shall file a certified copy of the same as an exhibit in connection with Mr. Jenner's testimony in this cause.

142 Mr. DONALDSON: That does not relieve my friend from the necessity of producing the original letter now here, when the testimony with reference to it is being offered. I therefore object to the testimony.

Mr. EVANS: Then, I shall have to discontinue the cross-examination of this witness until I can secure that letter, or said certified copy of the same.

Mr. LEIGHTON: Give some reasonable excuse for adjourning and we will be willing to adjourn, but not such a one as you gave there.

Mr. EVANS: I think that is a competent excuse, and I could leave the room on that.

By Mr. EVANS:

Q. Mr. Jenner, I hand you a paper filed in equity cause No. 20,360, Starkweather against Warner and others, and marked Exhibit J. E. M. No. 1, and ask you whether or not you recognize that as the letter which you have just stated you recollect signing? (Handing witness paper.)

Mr. DONALDSON (to Mr. Evans): You mean the original or a copy?

Mr. EVANS: As a copy of the original.

Mr. DONALDSON: I object to any testimony in reference to a copy of the letter.

Mr. EVANS: I will state here that this certified copy, or this copy, was made and certified as a copy by the Examiner. The original letter having disappeared, in addition to all the complainant's testimony in said cause, from the files of the court, it cannot be produced.

143 Mr. DONALDSON: Same objection renewed.

A. (After examining same.) This appears to be a correct copy, so far as I remember it.

Q. This letter is dated Washington, D. C., February 18th, 1899. A. It is.

Q. And these notes are dated January 28th, 1898, payable one year after date? A. That's right.

Q. With reference to the Spring street lots, Mr. Jenner, what would be their condition with respect to grade should Spring street be widened as has been contemplated and the colored holdings eliminated?

Mr. LEIGHTON: Question objected to, as it has to do with the future condition of the property, and not its present, and it is not relevant, nor is it responsive to anything brought out in the direct examination.

Mr. EVANS: I will state that the testimony of Mr. Jenner as to the grade of these lots has reference to the future extension of 16th street also.

A. If the colored holdings were eliminated all these lots would be eliminated also. The grade of that proposed boulevard so eliminating the lots was never established, as I understand it.

Q. As a matter of fact, has not the ditch to which you have testified been eliminated, and a large sewer established in its place, and quite a filling made over the sewer? A. A large sewer has

144 been made there, but the ditch still exists, and since the sewer was laid there Mrs. Murray has sued the District for damages, owing to her house being nearly washed away, according to her account, by the rush of water down that old water course.

Q. How long has it been since you have seen this property, Mr. Jenner? A. I was there last summer sometime.

Q. Well, where did you get your information that this damage to Mrs. Murray's property came from the overflow of the ditch? A. From the papers in her suit.

Q. Don't you know that she failed in that suit, and it was shown that this was a breakage from the sewer? A. I don't think I examined the papers after the suit was decided.

Q. So you don't know really? A. I know that she failed in her suit, but I haven't examined the papers since to see just why.

Q. And you haven't examined the property to see whether that ditch has been filled or not, have you? A. I did not look closely for that ditch last summer, but the general appearance of the ground was the same as it has been for several years. Probably before the sewer was made there it was different.

Q. Well, as a matter of fact, you can't tell what the condition of the property there is to-day, anyhow, can you? A. Yes, fairly.

145 Q. How do you know what changes have taken place since you have seen it? A. Some ashes have been thrown on some of the lots, and there has been some dumping of rubbish there. I didn't see that the contour of the ground has been materially altered during the last few years.

Q. If you haven't seen that property since last summer, Mr. Jenner, how can you say that there has not been a good deal of alteration there since that date? A. I have not seen it since last summer. I can't speak positively as to the present date.

Q. You must have had considerable confidence in the future of the syndicate, Mr. Jenner, if you purchased four additional shares of stock on June 19, 1902? A. I had no confidence whatever.

Q. Well, then, why did you make that additional investment? A. I purchased them for a very small sum of money at the request of the holders, who were out of town parties, and they wanted to get rid of the whole matter, being thoroughly disgusted with it.

Q. Have you any objection to stating what that small sum was? A. I don't remember at the present time.

Q. It was too small to remember, was it? A. It was a small amount that I paid in cash, which I had on me at the time.

Q. This three acre tract is contiguous and adjoins the seven
146 acre tract formerly owned by the syndicate? A. It adjoins it.

Q. Its full length? A. I think so, on one side.

Q. Does the property extend from 14th to 16th streets? A. No it does not extend to 14th street. It is possible that 16th street may just touch a corner of the three acres.

Q. You are sure that the syndicate property does not touch on the line of 14th street extended. A. I am sure of it.

Q. You are the present owner by purchase of the seven acre tract formerly held by the syndicate, are you not? A. I am part present owner.

Q. Who are the present owners?

Mr. LEIGHTON: I object to that. It is not relevant to anything brought out in the direct examination, and it is immaterial to this issue.

A. Those who have contributed to its purchase.

Q. Well, can't you name the purchasers?

Mr. LEIGHTON (to the witness): Well, you need not answer that. We will make an issue on that right at this point.

The WITNESS: I can give you the names of the original parties.

Mr. LEIGHTON: I don't propose to try 20,205 in this suit.

147 Mr. EVANS: I don't want to put the court or ourselves to any unnecessary trouble in this matter, so, if the gentlemen are so sensitive on this particular point, I won't press the question.

Mr. LEIGHTON: My sensitiveness is caused entirely by the unnecessary expense that is being multiplied by unnecessary and irrelevant questions, which I have got to pay for. That is the truth about it; no other objection to it.

By Mr. EVANS:

Q. The seven acre tract, Mr. Jenner, has no outlet on Spring road, has it, other than through the Spring street lots? A. I think it has a small outlet at one end.

Q. On Spring road? A. On Spring road.

Q. How much of a frontage would you judge? A. I have forgotten; only a few feet, however.

Q. You are acquainted, Mr. Jenner, with the improvements in the way of street car lines and buildings made within the last two years near this property? A. I have not been there since last summer.

Q. You are aware that the 11th street line has been extended to a short distance from this property? A. I did not see it there last summer.

Q. Well, you are aware that the Metropolitan line cars run near 16th and Park streets, don't you? A. Yes. That is no where near this property.

Q. Why, how far is it from the property? A. I don't
148 know the distance. It is up at the top of the hill. This property is down in the valley, on the other side.

Q. Well, is it two squares or three squares? A. I should think rather more than that. You can't walk direct from the terminus of the cars to this property.

Q. Well, that brings railroad facilities near that end of the property—a mile or so nearer than they were two years ago, does it not? A. It brings them nearer in one sense, but they are not available to that property.

Q. Why, can't any one go from that property to the Metropolitan car line at 16th and Park? A. I suppose an active man could scramble over the lots and get there.

Q. Well, is Spring street or Spring road on the side of these lots away from Park street, or towards Park street? A. It is no where near Park street.

Q. Well, how does it run with reference to Park street, parallel or otherwise? A. I don't think it is parallel. I think both of them have a general direction of East and West.

Q. You have testified that 16th street extended will touch this three acre tract, have you not? A. I think it just touches at its extreme Western corner.

Q. Well, then, is not the extreme Western corner pretty
149 close to the Metropolitan car line terminus? A. No, sir, a long ways off. There are no cars on 16th street extended.

Q. Well, then, on what street is the Park street and 16th street Metropolitan car running? A. I don't know as to the names of the streets. There is an old 16th street, a narrow street up there. You might have confounded that with 16th street extended.

Q. Well, that would be a square further away than 16th street extended then? A. I can't remember just how the old 16th street lies.

Q. Then, as I take it from your testimony, your opinion is that

these various improvements during the past two years have not appreciated the value of the property? A. Nothing has come to my knowledge which would cause me to think so.

Q. In this letter of February 18th, 1899, signed by Ellis Spear and yourself, the statement is made by you as follows: "The undersigned also think that the three acres of land is worth the incumbrances on it, and that it will be worth much more in the course of some years." Was that statement correct, according to your opinion at that time?

Mr. DONALDSON: The same objection heretofore urged to any testimony in relation to this alleged copy is repeated.

A. It was. We wrote in the most encouraging manner we could, as we didn't want the property to be foreclosed at that time.

150 Q. Well, have you any reason to change your opinion as to the value of that property being more in the future than it is at present? A. I still think that in the course of years it may be worth more than it is at present.

Mr. EVANS: I will enter an objection here to the introduction of these notes testified to by Mr. Jenner in evidence, and to the note in which Mrs. Davis claims an interest made payable to the order of Ellis Spear, for the reason that the decree of the Court upon final hearing in Equity cause 20,360, held that the trustees Croissant and Johnson had no authority to make such notes to bind the syndicate, and upon that ground set aside the sale of said property under the deed of trust securing the payment of these identical notes. I will suspend the cross-examination at this time, but reserve the right to recall Mr. Jenner should I be advised that it would be proper to do so.

Mr. LEIGHTON: I want to reserve the right to recall Mr. Jenner for the purpose of some redirect examination.

(Without concluding the examination of the foregoing witness an adjournment was here taken until Monday, January 30, 1905, at 3 o'clock p. m.)

151 MONDAY, *January* 30, 1905—3.40 o'clock p. m.

Met, pursant to adjournment.

Present: Benjamin F. Leighton, Esq., Solicitor for certain complainants; R. Golden Donaldson, Esq., Solicitor for the defendant trustees, and the complainant Herbert W. T. Jenner.

Whereupon HERBERT W. T. JENNER was re-called and further interrogated.

Redirect examination.

By Mr. LEIGHTON:

Q. Mr. Jenner, you stated in your cross-examination that the $535 note was given in consideration of the transfer by you of certain lots to the trustees of the syndicate. State how you happened

to acquire those lots, and detail a little more fully, if you will, the transaction in regard to them? A. The portion of lots deeded to me were in the line of a projected public street, and the trustees considered that they had no value to the syndicate, except for a small amount which might be obtained for them in a condemnation proceeding, and I paid certain money to their order and they gave me a deed to these lots, so that I might get my money back; and I also, at the same time, signed a contract under which I was to account with them for any balance of money I might receive over the amounts advanced at that time, and advanced at any future time.

152 Q. Received from the condemnation proceedings? A. Yes.

Q. What became of the condemnation proceeding—was it carried through? A. The District Commissioners changed their plan with regard to making that proposed street, and shortly after that I re-deeded the lots back to the trustees, as it was not the intention that I should become their permanent holder.

Q. Were those re-deeded to the trustees in consequence of suit 16,612? A. No.

Q. Did or not the amount of this note represent what you had advanced to the trustees for the benefit of the syndicate up to the time you redeeded the property? A. It did.

Q. Can you give the items which went to make up the note? A. The items are as follows:

Overpaid on shares	$98.42
Shipley, Examiner, for testimony in No. 16,612, paid March 10, 1896	63.12
Expenses, journey to Hartford, in Nov. 1895	50.00
Purchase of note of Croissant & Johnson, trustees, given for overdue interest of first trust on Crescent Heights, Oct. 29, 1895	230.10
Taxes, interest and expenses on lots in Lewis' subdivision	93.71
	$535.35

153 Q. Will you explain what you mean by "overpaid on shares"—you have one item "overpaid on shares, $98.42?" A. When I purchased my second share they charged me six per cent. additional from the date of formation of the syndicate, and afterwards they concluded that they should not have made that charge.

Q. "Expenses, journey to Hartford, $50." What about that item? A. I was requested to go to Hartford by certain of the stockholders, and by Mr. Johnson the trustee, to endeavor to get the Hubbard estate to release Crescent Heights from the operation of a blanket trust on payment of $5000 by the syndicate.

Q. What was the amount of this blanket trust? A. I forget the amount.

Q. Was it greatly in excess of $5000? A. It was very greatly in excess of $5000.

Q. State whether or not it covered the three acre tract? A. It did not cover the three acre tract.

Q. It covered the seven acre tract? A. The seven acre tract and other property, not owned by the syndicate.

Q. You speak of an item here for "Taxes, interest and expenses on lots in Lewis' subdivision." State what property that is? A. These were the lots which were deeded to me by the trustees, and which formed a portion of the three acre tract.

154 Q. You stated in your cross-examination that the trustees were paid $32,500, about. Do you know what became of any portion of that money? A. The trustees have checks showing that they paid sums aggregating $12,100 to Mr. Starkweather, and they also have checks showing that they paid other amounts to other parties.

Q. You don't know in detail what became of the amount, other than what you have stated? A. I could not testify from recollection. It is a long account.

Q. Do you know whether or not the whole of that sum was paid out for the benefit of the syndicate? A. I do not.

Q. You spoke of purchasing four shares of stock in June—June 19, 1902, for a small sum. Will you state how it came about that you were able to purchase them for a small sum of money—for less than you were obliged to pay when the syndicate was organized? A. The seven acre tract had been sold out at public auction, and these certificates only related to the remainder, which was less than three acres. The indebtedness of the syndicate was thought by most of the stockholders to be about equal to the value of the land plus the amount which probably would be necessary to wind up the whole matter. The owners of those certificates were out of town parties and they were thoroughly disgusted with the syndicate, and wanted to have nothing more to do with it whatever, and I

155 purchased them for a small sum, so that I might be saved the trouble of conferring with those parties, and possibly the expense of getting service on them by proclamation if a suit were brought.

Q. State whether or not the filing of equity cause 16,612 had anything to do with the then financial embarrassment of the syndicate? A. I don't think the filing of the original bill had much effect, but the filing of Mr. Starkweather's amended bill had a very bad effect upon the syndicate, because it disclosed his intention to repossess himself of the property if he could.

Q. What was the condition of feeling in the syndicate at the time you purchased these four shares as to the paying of assessments, and going on with the syndicate business? A. Some members expressed a willingness to pay, provided all members paid, but they seemed unwilling to pay to the trustees Croissant and Johnson. They thought the amount of the assessment made by Croissant and Johnson was rather high.

Q. In your cross-examination, you state that eleven shares—your last statement was that eleven shares were assigned to Starkweather. Have you any correction to make of your testimony in that regard?

A. I have an explanation to make, and that is that the trustees kept back two shares from Mr. Starkweather because——

Q. For what purpose? A. He said that the Cresent
156 Heights property could be released from the operation of the blanket trust on payment of $5000. These shares, therefore, do not appear in the stock-book, because they yere not issued, but they have always been considered as being chargeable against Mr. Starkweather's account, and I had them in mind when I said that he was chargeable with eleven shares, and with the two commission shares in addition, making thirteen altogether.

Q. Were these shares ever issued by the trustees—these two shares that you speak of? A. They were not.

Q. Do you know why? A. Because Mr. Starkweather never obtained the release of Crescent Heights for $5000. If he had obtained the release of Crescent Heights from the operation of the blanket trust he would have been entitled to those two shares.

Q. They were retained, then, as I understand, for the purpose of securing the release of this trust by Mr. Starkweather? A. For the purpose of off-setting the amount of $5000.

Q. Do you know who put this so-called blanket trust upon the property? A. Mr. Starkweather himself.

Q. Prior to the sale of the property to the trustees, Croissant and Johnson? A. Long prior.

HERBERT W. T. JENNER.

157 Subscribed before me this 6th day of February, 1905.

J. ARTHUR LYNHAM, *Examiner.*

(At this point an adjournment was taken until tomorrow, Tuesday, January 31, 1905, at 3 o'clock p. m., and the Solicitors for the defendants, Messrs. Edwin Forrest and Richard P. Evans were immediately thereafter notified by the Examiner of said adjournment, by leaving a typewritten notice of the same in their respective letter boxes, both gentlemen being out of their offices at the time of the call.)

TUESDAY, *January* 31, 1905—3 o'clock p. m.

Met, pursuant to adjournment.

Present: Benjamin F. Leighton, Esq., Solicitor for the complainants; Richard P. Evans, Esq., Solicitor for certain defendants, and the complainant Jenner and defendant Starkweather *in propria persona.*

Whereupon HERBERT W. T. JENNER was re-called and further interrogated.

Recross-examination.

By Mr. EVANS:

Q. Mr. Jenner, where is that contract you say that you
158 signed agreeing to pay back to the syndicate any money you might receive over and above what you paid out for that three acre tract? A. I think it is lost.

Q. When did you last see that contract? A. It was produced at one of the sessions of taking testimony in 16,612. That is the last time I saw it.

Q. Didn't you testify in that very case, 16,612, that there was no agreement in writing, but it was understood between yourself and the trustees? A. No, I testified distinctly that there was an agreement in writing.

Q. Who signed that agreement? A. I did.

Q. Who else? A. No one else.

Q. There was not any mention made of that in the deed itself to you? A. No.

Q. Where did you get these items to which you have testified, making up the face of one of these notes to you—have you a book account of them? A. No, I have no book account.

Q. Have the trustees a book account of them? A. I don't know.

Q. Where did you get the items? A. I had them as items
159 in the form of memoranda for a good many years.

Q. Who are the stockholders that requested you to go to Hartford? A. I can't remember all of them. Mr. John O. Johnson, the trustee, was the party whose request I followed. The stockholders who also wished me to go were Mr. Spear, Mr. Parker, Mr. Barker, and some others, but I can't remember who was at the meeting that authorized me to go there.

Q. Did Mr. Starkweather authorize you to go there? A. He did not.

Q. Whom did you see at Hartford relative to this matter? A. I saw Mrs. Hubbard, who was, I think, the executrix of the Hubbard estate, and Mr. Buck, who was her legal adviser and Mr. Hills, who was also financial adviser of Mrs. Hubbard.

Q. You negotiated with them for the purchase of the blanket trust, did you not? A. They wanted me very much to purchase the blanket trust note, and I had conversation with them, but it never got so far as a negotiation.

Q. Well, don't you know as a matter of fact, that previous to your journey to Hartford that they had been willing over and over again to accept this $5000 if the trustees had proffered the money? A. No. They told me they never had been willing.

160 Q. Who told you that? A. Mrs. Hubbard and Mr. Buck, both of them.

Q. When you came back here you consulted with Mr. Ellis Spear, did you not, about buying the entire blanket trust note? A. I think it is quite probable that I did, but I don't remember that. I am certain I consulted with Mr. Croissant.

Q. And you wrote on to Mr. Buck, did you not, that you had decided not to purchase that? A. No, I was in correspondence with Mr. Buck for a long time. I never wrote him definitely that I would not purchase it, or that I could not purchase it.

Q. Now, when was this seven acre tract released from the lien of that blanket trust? A. I don't know, but I presume it would be after I had purchased it.

Q. After you purchased the property? A. After I purchased the seven acres.

Q. Well, now, when it was finally released, was not the consideration $5000 and interest that was paid for the release? A. I only have information of that from seeing some accounting made by Duval and Cole. I can't remember the amount that was charged to that note, but it certainly is stated in that accounting.

Q. You bought in the seven acre tract for $17,100, did you
161 not? A. I think so.

Q. What was the amount of the trust under which it was sold? A. I have forgotten the exact amount.

Q. What was the occasion of the selling of the seven acre tract? A. I think it was sold at the request of the holder of the notes secured on the property.

Q. Was it because of default in interest or default in principal? A. I understand for default in the payment of interest.

Mr. LEIGHTON: That question is objected to. It is not proper cross-examination, and the whole matter was gone into and determined by Equity cause 20,205.

Mr. EVANS: I am sticking closely to the text of the re-examination in making these questions.

Q. Do I understand you to mean that there were two syndicate shares to which Mr. Starkweather was entitled that were not issued, but are still held in the treasury of the syndicate? A. Two shares were kept back from him.

Q. They have not been issued as yet? A. No.

Q. Did you write or make a proposition to these certificate holders, whose stock you recently bought, or did they come to you? A. I don't remember all the details, but Stanley Johnson certainly came to me a number of times, when he visited Washington, and
162 wanted me to buy his stock.

Q. Did you inform them that there was an equity cause pending looking to the return of the seven acre tract to the syndicate? A. I have had conversations with them about it, but they knew of that probably from Mr. Johnson. They knew of it before I spoke to them about it.

Q. How do you know they knew of it? A. Because they came and asked me about it. These various parties—out of town stockholders—came on to Washington about the time of the first sale of the seven acres, and I met them then.

Q. Now, from the results of the sale of the seven acres the trust under which it was sold had to be satisfied? A. No doubt.

Q. And the expenses of sale had to be paid? A. Undoubtedly.

Q. Now, do you know whether this seven acre tract has been released or not from the operation of the blanket trust—you are the present holder of it, I believe? A. I don't know of its ever being released by a deed of release.

Q. Well, then, how has it been released? A. It has been released by virtue of the auction sale. The trust under which it was sold was a trust prior to the blanket trust.

163 Q. You subscribed to the original syndicate agreement, did you not? A. I did.

Q. And in that agreement, do you recall that the syndicate agreed to pay Mr. Starkweather $75,000 for that property—the entire property? A. They did.

Q. Well, at the time he filed 16,612, had they paid him that money, or that price? A. I could not tell you about that. He, in his amended bill, asked for an accounting, but an accounting was never completed. I only have knowledge of what was paid to Mr. Starkweather from the proceedings in the case.

Q. What assessment is this you refer to made by Croissant and Johnson, which you say the stockholders thought was rather high? A. That was an assesment which was levied by the trustees sometime in the summer of 1898.

Q. Have you got a copy of that assessment with you? A. No, I have not.

Q. Do you know where there is one? A. No, I have tried to find a notice and none of the stockholders appear to have kept the notices.

Q. Do you know whether or not they ever endeavored to enforce that assessment by the sale of the syndicate shares of the defaulting holders? A. They did not.

164 Q. What income is this property bringing in now, this three acre tract? A. I don't know that it is bringing any.

Q. There are two or three houses on it that are rented, are there not? A. No. Two of the shanties washed down in a heavy rain some two or three years ago. There is one old shanty still standing on it.

Q. Is not the Albert Lewis house standing there and rented? A. I don't know the Albert Lewis house.

Q. Do you know whether they paid $1500 for a house there or not? A. No, I do not.

Q. Well, you don't know much about the income from the property, do you? A. No.

Q. What is the trust existing of record against that property to-day?

Mr. LEIGHTON: Question objected to, because it is not proper re-cross examination, and not of any importance to this inquiry.

A. I don't know of any.

Q. You are one of the complainants in this cause? A. I am.

Q. What is your reason for asking the relief which you claim in this bill? A. This matter has been a source of great trouble

165 and annoyance to myself, and every stockholder that I have had any conversation with, for a great number of years, and we have all come to the conclusion that the only way to do is to clear the whole matter up by a sale.

Q. When you say that you all have come to that conclusion, who do you mean? A. All I have had conversation with.

Q. Have you had any conversation with Mr. Starkweather about it? A. Not for a great many years.

Q. Not about this? A. No. We think that each member of the

syndicate who wants to own any of that property can go out and buy any portion of it he pleases, and pay what he thinks proper for it, and every syndicate member will then be in a better position than if they held in common with other people.

Q. From the sale of the seven acre tract, do you know whether there is any money in the hands of the trustees of the syndicate to the credit of the syndicate? A. I do not.

Q. You don't know what became of the money received from the sale of that tract? A. Only from seeing the accounting of Duvall and Cole. I think the whole of it was absorbed by the first trust and the blanket trust and expenses.

Q. How much money did you pay to the order of the trustees of the syndicate at the time they gave you a deed to the three
166 acre tract? A. I don't remember the amount.

Q. Was it $100 or less? A. I think a little under. They did not give me any deed to the three acre tract.

Q. Well, what was that deed, then? A. The deed was for a few lots, and fragments of lots, which were in the line of a projected public street, and in between colored holdings.

Q. They are the lots which are shown on the plat which has been filed as an exhibit in this case? A. They are amongst those lots, but they are only a portion of them.

Q. Well, then, there is a strip of land back of those lots, is there, in the three acre tract not shown on that plat? A. It is shown on the plat.

Q. It is? A. Yes.

Mr. LEIGHTON: Outlined.

Q. You don't know whether that was subdivided or not? A. It has not been subdivided of record.

Q. And those were not transferred to you? A. That back land and a portion of the lots were not transferred to me; only a small portion of the lots were deeded to me.

Q. Then, the colored holdings don't go back to that part of the three acre tract? A. They go back eighty feet from Spring street.

167 Q. Do they go back on that part of the three acre tract which is not shown in these subdivided lines? A. They don't go back so far as the subdivided lines.

Q. Then, if I understand it, if Spring street was widened it would bring the back part of this three acre tract not shown in this subdivision where the colored holdings are, to the front? A. That would depend upon the platting of the new street.

Q. How wide is Spring street? A. Spring street has a nominal width, I think, of fifty feet, but it is really about perhaps twenty-five feet wide. The man on the South side has his fence out in the road.

Q. Then, if the colored holdings run back about eighty feet, and in widening the street they take in the whole of the colored holdings, that would make a street over eighty feet wide, would it not? A. I suppose so. If you are referring to the boulevard which was projected years ago by the Commissioners that was going to wipe out all the colored holdings, and also the fragments of lots which were

deeded to me, I think that was to be about one hundred and eighty feet wide.

Q. And that would have brought the back part of the three acre tract fronting on the boulevard? A. It certainly has brought a portion of that back part on to the boulevard.

168 Q. Then, if that improvement is made hereafter, whoever owns the back part of this three acre tract, will have a property that will be very much appreciated over its present value? A. That improvement is not that provided for in the street extensions, as far as they are of record, and which we are told cannot be deviated from except by some special act of Congress.

Q. Then, in your opinion, whatever improvements may be made in the locality of this property, it can't appreciate the value of this property? A. I would not like to give an opinion as to the future of that property. The ground is very rough and it is very hard to say what can be done at all. At present, and I went out there last Sunday especially to see it, I can see that if this litigation was gotten rid of and the lots were gotten into the hands of private individuals, they could build small houses there and rent them to colored people, or they might build some stables, or something, and the ground would be thereby benefitted, and something might be made out of it. To that extent, I think that there is a fair chance of the property appreciating in value.

Q. The property back of it is a good deal higher, isn't it? A. Yes, a portion of the seven acres. There is a great chunk of dirt sticking up into the air about fifty feet high above the bottom of the ravine or ditch, or gully as one may say, of which the three

169 acres is largely formed.

Q. It would not be an impossible matter to grade that would it, so as to utilize this hole you speak of?

Mr. LEIGHTON: Oh, I object to the further cross-examination of this witness on this line. It is simply multiplying the expenses of the record to no purpose.

Mr. EVANS: I think it is entirely proper, if we are to have anything before the court upon which the court is to base its judgment as to whether it is best to grant the prayers of this bill or not. So far, I must confess I have seen very little evidence to support the bill. There has something been put in here that might be proper in an accounting before the Auditor.

A. On the other side of the chunk of dirt I have spoken of there is another enormous hollow, and I think that all the ground which could be spared from the top or projecting portion of the hill would be wanted to fill up the hollow on the North side of it.

By Mr. LEIGHTON:

Q. Mr. Jenner, you spoke of the blanket trust and the trust under which the seven acre tract was sold as being a prior trust. State whether or not the blanket trust was not thereby cut out, that is, by the sale under the prior deed of trust; whether the blanket trust, so called, was not cut out? A. The blanket trust was cut out by the sale under the first trust, undoubtedly.

By Mr. EVANS:

170 Q. Do you know whether the surplus, after the payment of the trust under which the sale was made, was applied merely to that part of the blanket trust covering the seven acre tract, or whether it was given to the holders of the blanket trust on account of the entire trust? A. I don't know as to that.

Q. You don't know whether any apportionment was made or not? A. No. I have seen the accounting made by Duvall and Cole, but I can't remember all that was in it. It might have been there.

By Mr. LEIGHTON:

Q. Mr. Jenner, is there any other member of the syndicate, so far as you know, except the defendant, Mr. Starkweather, but what desires that the affairs of the syndicate shall be wound up, and this property sold? A. There is no other member to my knowledge.

By Mr. EVANS:

Q. Is there any other member of the syndicate as deeply interested in this matter as Mr. Starkweather? A. I don't know any member who is less interested financially than Mr. Starkweather, if you mean interested financially.

Q. Financially is what I mean. Then, do I understand you to say that, outside of the syndicate shares now held by Mr. Starkweather, that the purchase price agreed to be paid him for this property has been paid, or is it still due him from the members of

171 the syndicate? A. I can't testify to that, on account of the accounting never having been completed.

Q. Then, how can you say that there is no other member of the syndicate less interested financially than he is? A. Because his certificates are incumbered by debt, and, to the best of my knowledge, are held as security for the payment of collateral notes.

Q. Well, that does not wipe out the balance of the purchase money due him from the syndicate shareholders, does it? A. I don't know.

Q. And the fact that he owes money on it would naturally make him more anxious to recover some money upon those syndicate certificates, would it not, in order to pay off this obligation? A. I don't know that anything could cause Mr. Starkweather to be more anxious to get hold of money than he is naturally.

HERBERT W. T. JENNER.

Subscribed before me this 6th day of February, 1905.

J. ARTHUR LYNHAM,
Examiner.

Thereupon BRAINARD H. WARNER, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

172 Direct examination.

By Mr. LEIGHTON:

Q. Mr. Warner, what is your occupation. A. Real estate.
Q. For how many years? A. More than thirty.
Q. In the city of Washington? A. Yes.
Q. You are familiar with the property described in the complainants' bill? A. Yes, sir.
Q. Are you a member of the Crescent Heights Syndicate? A. No, sir; that is one of the few syndicates I have kept out of.
Q. I will show you a note purporting to be signed by John O. Johnson and J. D. Croissant, trustees, dated January 28th, 1898, and ask you to state whether those are the signatures of Johnson and Croissant? (Handing witness note.) A. (After examining same.) Yes, sir, they are the signatures of John O. Johnson and J. D. Croissant.
Q. You are familiar with their handwriting? A. I am.
Q. I will ask you to look on the back of the note and state whether or not those are also the signatures of the same parties? A. They are.

173 Q. Who is at present the owner and holder of this note? A. B. H. Warner.
Q. Has any portion of it been paid? A. No, sir.
Q. From whom did you acquire it? A. From Mr. S. Herbert Giesy.

Mr. LEIGHTON: I offer this note, with the endorsement on the back of it, in evidence, and ask that the Examiner may make a copy of it and return it to me.

Mr. EVANS: I object to the introduction of this note in evidence in this cause, upon the ground that it is incompetent, in view of the fact that in Equity cause 20,360 the court decreed that the trustees who signed this note had no authority to borrow money or make such a note, and were perpetually enjoined from doing anything looking to the recovery of any money thereunder, the Court holding that their right to raise money was limited by the declaration of trust in the syndicate shares, namely that of assessment.

(And the same is marked by the Examiner "For identification B. H. W. No. 1," and copied into the record, as follows:)

$554.12. WASHINGTON, D. C., *January* 28, 1898.

One year after date, for value received, we promise to pay to Henry J. Gross or order, the sum of Five Hundred and Fifty Four and 12/100 Dollars, at — with interest at the rate of 6 per centum per annum until paid; payable semi-annually.

JOHN O. JOHNSON, *Trustee.*
JNO. D. CROISSANT, *Trustee.*

174 (In left hand corner of note.)
Secured by deed of trust on pts. of 44 lots in J. C. Lewis subdivision.

S. HERBERT GIESY,
BRAINARD H. WARNER, *Trustees.*

(Endorsements on back of note.)
This note is hereby extended for one year from this 2nd day of September, 1901.

JOHN O. JOHNSON, *Trustee.*
J. D. CROISSANT, *Trustee.*
S. HERBERT GIESY.

Without recourse to me.

HENRY J. GROSS.

Without recourse.

B. H. WARNER.

By Mr. LEIGHTON:

Q. Complainants' Exhibit No. 1., attached to the original bill, is shown to the witness. I will ask you to state, Mr. Warner, whether in your judgment, the property that is outlined by that plat, and which belongs to the syndicate, other than that which is marked with red lines, is susceptible of division in kind between the owners or parties interested in this property, the shareholders, without loss and injury to them? A. In my opinion, it is not.

Q. What, in your opinion, would be the wisest and best mode of disposing of it, looking to the interest of the shareholders? A. Well, put it up at auction.

175 Q. And sell it as a whole? A. Sell it, trying the separate pieces first, and reserving the right to sell it as a whole, in case it would bring more that way.

Cross-examination.

By Mr. EVANS:

Q. Upon what do you base your opinion, Mr. Warner, that these lots are not divisible in kind among the shareholders?

The WITNESS: Just a moment. (To Mr. Leighton.) I understand that there are some fourteen different shareholders, is that right?

Mr. LEIGHTON: The number of shareholders and the amount of shares are represented in the bill of complaint——

Mr. EVANS: I object to this conversation between the witness and counsel on the other side. The witness is now under cross-examination. He has given his opinion, which, necessarily, must have been based upon knowledge in his possession, and I want now to get from the witness a statement of the facts and knowledge upon which his opinion is based. It is too late now for him to, with the assistance of counsel, gather information.

Mr. LEIGHTON: (To the witness.) There are twenty-four shares issued altogether, and some of the shareholders—members of the syndicate—own one share, and some own eight, one of them owns

eight, many of them but one; one owns eight, and one
176 group of parties own three, that is the Campbell heirs owns three shares, and one of the parties owns four.

The WITNESS: I understood there was about fourteen——

Mr. EVANS: I must again voice my objection to this proceeding on the part of counsel for complainants. He must know that it is entirely out of order, and whatever answer the witness now makes, of course, is based upon hearsay, and that hearsay the statement just made by his counsel, which he can have no personal knowledge of, whether true or otherwise.

The WITNESS: I base my reply upon my understanding that there were about fourteen different shareholders.

By Mr. EVANS:

Q. And that understanding you have just gathered from the statement made by Mr. Leighton to you? A. No, sir; I understood so before I made any answer.

Q. Then, why did you apply to Mr. Leighton for information, when I asked you as to what you based your opinion upon? A. I turned to Mr. Leighton to know if my understanding was correct, as I should have done to you with equal facility.

Q. Well, now, will you state of your own knowledge as to what shareholder owns four shares? A. I know nothing about the——

Q. Will you state of your own knowledge as to what share-
177 holder owns three shares? A. I will tell you, to avoid any prolonged examination, that I know the number of stockholders, but I don't know who owns any share.

Q. Then, your answer to my question is based entirely upon what Mr. Leighton has just told you relative to the stockholders, and the shares held by them? A. I told you in my previous reply that it was not based on that; that it was based on information I had previous to the opening of this examination, that there were about fourteen different shareholders.

Q. Well, you don't know then, of your own knowledge, whether these fourteen different shareholders own one share a piece, or whether it is divided up into other holds? A. I have just stated, about as plainly as I could state, my understanding.

Q. This note, to which you have testified, I notice is made payable to the order of Henry J. Gross, and is endorsed by Henry J. Gross without recourse. Do you know anything about the history of this note? A. Only simply it came into my hands.

Q. Did Mr. Henry J. Gross have any interest in that note? A. Mr. Henry J. Gross was a cashier in my office. That note was merely endorsed to him for the purpose of collection by me.

Q. The note was really, then, the property of S. Herbert Giesy? A. So it was, before I purchased it.

Q. And Mr. Henry J. Gross had no interest in it, except
178 that it was placed in his hands for collection, is that it? A. None at all. He had no interest in it.

Q. Then, how did it happen that it was made payable to his order

and secured by a deed of trust? A. Because I bought the note, or I agreed to buy the note from Mr. Giesy, and he had it drawn to Mr. Gross. My understanding was that this note was for an amount due him. I really know nothing further about — than that.

Q. And Mr. Giesy and you were trustees named in the deed of trust which secured the payment of this note? A. Yes, sir.

Redirect examination.

By Mr. LEIGHTON:

Q. Mr. Warner, assuming that the ownership of those shares are as follows: That one of the parties holds eight shares in the syndicate; two are owned by another member; two by another; five of the shareholders own one each, and that one of the former members, who is now deceased, he owned three shares, and that his interest has descended to his heirs at law, who are six children, with his wife having a dower interest probably in the shares, state whether in any way you want to modify your evidence as to the susceptibility or practicability of dividing this property in kind among the shareholders, without loss and injury to them? A. No, sir, I don't care to change it.

179 Recross-examination.

By Mr. EVANS:

Q. Mr. Warner, in view of the improvements, the street railway lines and the advance of civilization towards this property, the 16th street boulevard being extended by this property, what is your opinion as to its future value being greater than it is at present? A. Well, I judge, of course, there will be an advance in its value. The same as it is with all tracts, it would sympathize with the growth of the city.

BRAINARD H. WARNER.

Subscribed before me this 7th day of October, 1905.

J. ARTHUR LYNHAM, *Examiner.*

Mr. LEIGHTON: I offer in evidence the pleadings and proceedings in Equity cause 20,360, being entitled Starkweather against Warner and others, and the plaintiff announces his evidence closed.

180 COMPLAINANTS' EXHIBIT 10.

No. —. Whole Number of Interests, Thirty. — Shares.

Syndicate Certificate.

Know all men by these presents, that we, J. D. Croissant and John D. Johnson, Trustees, as joint tenants in fee, under certain Deeds from Geo. B. Starkweather and Emma, his wife, and recorded in the

Land Records of the District of Columbia, hold the Real Estate situate in the District of Columbia, and designated as follows, to wit: All of those certain pieces or parcels of land and premises known and distinguished as and being the 400,000 square feet, more or less, known as Crescent Heights, at the junction of Fourteenth Street (extended) and Spring Street, Mt. Pleasant, D. C.

Whereas, —— —— has contributed $2500 of the sum expended for the purchase of said real estate, and is, therefore, entitled to one-thirtieth aforesaid undivided interest in said real estate;

Now, therefore, in consideration of the premises and said payment, receipt whereof from said —— —— is hereby acknowledged, we, the said J. D. Croissant and J. O. Johnson do hereby declare that we hold the said real estate upon trust as follows, for said —— ——, heirs and assigns, to the extent of one-thirtieth aforesaid undivided interest; that is to say: In and upon the trusts set forth and declared in said deed.

181 It is further understood and agreed as follows:

The Trustees shall be entitled to and be allowed a joint commission of three per cent. on all receipts except from assessments heretofore or hereafter paid by members of the Syndicate, and from loans negotiated by Trustees.

This declaration and the interest hereunder shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the expenses incurred in the execution of the trusts as provided in the Deed to said Trustees, hereinbefore recited, which said assessments shall be payable within thirty days after written notice thereof shall have been mailed, postpaid to the person asssesed, or personally served upon him, and in default of such payment the said Trustees, or the survivor of them, are hereby authorized to sell the interest of such person so in default, either at public or private sale, after such notice and upon such terms as they or the survivor shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of the assessments, in default, with interest at 6 per cent. from date of notice, until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration and the interests hereunder may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the Trustees, and a new declaration

182 issued in the name of the purchaser, and the Trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and the interest hereunder, shall thereby be subrogated to all the rights and subjected to all the liabilities of the original holder; and the said —— —— as evidence of the acceptance of this declaration, and to confer all necessary power upon said Trustees, and the survivor of them, in the premises, as above set forth has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals, this — day of —, 189-, at Washington, D. C.

Signed, Sealed and Delivered in presence of

—— ——. [SEAL.]
—— ——. [SEAL.]

(On Back:)

Form of Transfer.

For and in Consideration of —— Dollars, to me in hand paid by —— ——, I do hereby convey, transfer and assign to
183 said —— ——, heirs, and assigns, all interest in and to the within described real estate, and do hereby direct —— ——, Trustees, to issue to said —— ——, heirs and assigns, a new declaration of trust in lieu of the within declaration.

Witness — Hand and seal this — day of ——, 189-.

—— ——. [SEAL.]
—— ——. [SEAL.]

Transfer Fee, $1.00.

184 *Testimony on Behalf of Defendants.*

Filed Oct. 7, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL., Complainants,
vs.
JOHN D. CROISSANT ET AL., Defendants.

WASHINGTON, D. C., *May* 15, 1905—1 o'clock p. m.

Parties met pursuant to notice at the office of Mrs. Margaret M. Murray, Examiner in Chancery, No. 503 E Street N. W., Washington, D. C., for the purpose of taking testimony on behalf of one of the defendants, George B. Starkweather.

Present: B. F. Leighton, Esq., representing the complainants; and Edwin Forrest, Esq., and Richard P. Evans, Esq., representing the defendants.

Whereupon Mr. GEORGE B. STARKWEATHER, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Q. Mr. Starkweather, you are the defendant Starkweather in this cause? A. I am.

Q. Are you familiar with the location of the property in-
185 volved in this controversy, which it is sought either to partition or sell? A. I am.

Q. I show you the plat marked "Exhibit No. 1," attached to the original bill of complaint in this cause, and ask you to state whether or not that correctly represents the property in controversy. (Handing witness the plat referred to.) A. (After examining plat.) This seems to correctly represent the subdivided portion of the land still remaining to the Crescent Heights Syndicate.

Q. How, on that plat that you have before you, is the subdivided part indicated? I mean by that whether there are any figures to indicate the subdivided part you refer to, and, if so, what are they? A. There are numbers 1 to 24 inclusive here, fronting on the Spring Street Road—Spring Road.

Q. What is this vacant property just to the north of the subdivided part, between the subdivided part and the blue line or white line (indicating)? A. It is what constituted the balance of what was known by the Surveyor Carpenter as "steamboat lot," owing to its shape. This lot was subdivided by one Dubois in the seventies, I think, and the rear portion contained twenty lots, making 44 lots in all. I caused to be placed of record the front tier of lots on Spring Road, but did not the back lots—did not have them recorded.

Q. So that whatever subdivision was made was not made a
186 matter of record? A. Was not made a matter of record.

Q. Do you know how many square feet of ground are in that rear portion? A. I have not the data with me. It is upwards of an acre, as I remember it.

Q. In the part that has been subdivided—do you know how many square feet of ground are in that portion? A. I haven't the list with me. It is from one to two acres.

Q. Do you know of your own knowledge, or can you tell from that subdivision, how many of those lots that front on the Spring Road still remain with the syndicate, and, if you can give them by numbers, do so? A. I cannot give all. I can give part. Lots 1, 2, 6, 11, 14, 15, 22, 23 and 24, I am substantially positive are owned by the syndicate today.

Q. As to the remaining numbers of the 24 lots, what has become of those? A. Certain portions were alienated. Two of those lots were never in my control.

Q. What two are those? A. Lots 5 and 10; a portion of 10 was—became in my control later. And the front portions of several of these other lots were alienated by me previous to selling to the syndicate.

Q. Can you tell what portions of which particular lots—designating them by numbers? A. Parts of 4, 7, 8, 9, 12, 13, 14, 16, 17, 19, 20, and 21—portions. About half in many cases.

Q. Is there anything on the face of that plat before you (indicating) to indicate by coloring what part, if any, of those lots
187 have been disposed of or not held by the syndicate? A. (Referring to plat.) There are red lines here which indicate the portions of lots which I alienated. They refresh my memory and I can cofirm their substantial accuracy.

Q. Do those red lines on the plat before you indicate with any

degree of accuracy the extent to which such portions have been alienated? A. They do.

Q. When, if at all, did you last see that property? A. It was about thirty days ago.

Q. In what condition was the portion of the property fronting on Spring Road, as to its being on grade or above or below grade? A. It was below grade.

Q. To what extent? A. Oh, from one to six or seven feet.

Q. Was that the uniform depth below grade or did it graduate from one end to the other? A. It was very irregular. It was used—is being used, to my surprise, as a dumping ground for ashes and refuse of all kinds, and the bon-fires are daily consuming the loose litter, papers, etc.

Q. To what extent, if you know, has the portion of the lots belonging to the syndicate, been so used as a dumping ground? A. I think two-thirds of what remains to the syndicate is already
188 buried under these accumulations, which are daily being added to.

Q. Have you any personal knowledge by whose authority that property is so used as a dumping ground? A. I have not.

Q. Was it done to your personal knowledge or by your personal permission? A. While I was a square and a half away, on the extension of 16th street, a garbage man made inquiry of me where that dumping ground was, which showed me that it was notoriously used and sought as a dumping place.

Mr. LEIGHTON: Objected to as hearsay. I move to strike it out as irrelevant.

Q. When you saw this property about thirty days ago, when it was used as a dumping ground, was that the first knowledge you had of that fact?

Mr. LEIGHTON: I object to this question as irrelevant and immaterial.

Mr. FORREST: The testimony is offered for the purpose of showing the condition of the property in controversy.

A. It was.

Q. I have last called your attention to the front of the property and you have referred to the rear portion also. I would like to know from you what if any, part of the rear portion of that property, as indicated on that plat and identified by you, has been alien-
189 ated, to your knowledge? A. None to my knowledge.

Q. What is the condition or lay of the ground of that rear portion of the property? A. The northernmost line averages above the grade of Spring Road. It dips sharply into what was Lewis Run which passed along about the rearward line of the front tier of lots. It is now practically obliterated by the dump—ashes etc.

Q. You mean the run is? A. Yes, sir. Because there has been a sewer to remove the water and there is nothing but the surface water to catch there—no stream there any longer. It has been sewered.

Q. Is there at present any outlet to that rear portion, to any other road save Spring Road? A. There is not.

Q. How near is the nearest road to that rear portion? A. Aside from Spring Road or Spring Street?

Q. Spring Road or any other street that is in that immediate vicinity? A. Why, it is a matter of 100 to 200 feet—over 100 feet from any public road.

Q. Do you know where 16th Street is located? A. Yes, sir.

Q. How near is 16th street at its nearest point to this property? A. The line of 16th Street touches the western end of this—it will.

190 Q. When you say "it will," what do you mean by that? A. This extension will. It has already been condemned.

Q. But as a matter of fact it has not been made out. A. It has not been filled in. It has been filled in to within five or six rods of this point.

Q. When you say that it will touch it at its westernmost point do you mean the rear portion of this property or the part that has been subdivided? A. I mean to say Lots 1 and 44 of the "steamboat Lot," the west end of the "steamboat lot" as it is subdivided and the un-subdivided portions will be close to 16th street.

Q. Is there any way of reaching Spring Road from the part that is not subdivided, save through the subdivided lots? A. No, sir.

Q. Do you know, Mr. Starkweather, what the yearly taxes amount to on this property? A. It was but a nominal sum when I sold to the syndicate. I cannot state definitely. I was recently at the Assessor's Office and I found it was a little less than $12 a year, all that I could find they had any record of.

Q. Twelve dollars a year for what? A. For the portions of these front lots. I left there a few moments ago and they had not

191 been able to find any—showed me no assessment for these rear portions. Whether it is through some inadvertence of the office I had not time today to find out. But at the same rate—if $12 represents the annual taxation of the front subdivided portion, the rear portion would not be over $12 more so that it would all be within $25 or $30 annually.

Q. On this property, a description of which appear- before you, were there any improvements—that is, on the part that belongs to the syndicate? A. Yes, sir; there is at least one very respectable frame house, rented.

Q. And where is that located—on what subdivision lot, if you know? A. It is lots 11 and 12—all of 11 and part of 12.

Q. How large a house is that? A. It is a two-story, four or five room house.

Q. Brick or frame? A. It has a brick basement kitchen and then two or three rooms, and an upper story—second story. I have been in the house, was there when it was built; it has five or six rooms, as I remember it.

Q. When you were out in that neighborhood, some thirty days ago, as you have testified, was the house occupied? A. It was occupied by a very nice looking family.

Q. What is the rental value of that property, if you know?
192 A. It is five or six dollars a month, readily.
Q. Do you know who, if anybody, collects the rent from it?
Mr. LEIGHTON: Of your own knowledge, Mr. Starkweather.
A. It was reported—the report in the street was that one Russell, the real estate agent, collected for everything along there. I have no other knowledge.
Q. The only knowledge you have, then, is what somebody reported on the street? A. The current report on the street; two or three reports came to me.
Q. Do you know the name of the family that live there? A. It has escaped me at this moment. I did know it. A Richmond family, I remember.
Q. Do you know how long the man has been there? that is, of your own knowledge? A. I do not.
Q. Had you ever seen him there before you saw him there some thirty days since? A. I think not.
Q. Was that house on the property when you made your conveyance to the syndicate? A. It was, but——
Q. Was it under rental at that time? A. It was. The syndicate purchased it subject to its agreement with me, purchased it of one Albert Lewis.
193 Q. Did you ever hear, from any of the parties to this cause, whether that property was ever under rental from the syndicate, and, if so, to whom? A. I heard it from both Mr. Johnson and Mr. Jenner.
Q. When did you hear it from Mr. Johnson or Mr. Jenner? A. Oh, it was several years ago. I couldn't be definite on that. It was the time when we were talking over these matters.
Q. What, if anything, did they say about the rental at that time? A. It was in discussing the matter of carrying the property expenses and the meeting of obligations, of taxes, etc. In a general way it was discussed what the property produced—the rental.
Q. What did they say, if anything, about its monthly or yearly product as a matter of revenue? A. My only memory on that is that it was more or less thought that one canceled the other. That is to say, the expenses were measurably met by the rentals. One time there was a storm which destroyed several houses there—a few years ago, and that greatly reduced the rental value of the property there. I cannot be definite on that matter.
Q. Where did you have this interview with these gentlemen, or either one of them, as to that? A. At their offices here, back
194 and forth. It was when I was a regular caller at those offices in discussing those interests.
Q. Do you know, during the life of the syndicate, whose duty it was to collect the rents or collect anything that was due to the syndicate? A. It was Croissant & Johnson.
Q. As trustees? A. As trustees.
Mr. LEIGHTON: Question and answer objected to as calling for legal conclusions instead of a statement of the fact. The court would know whose duty it was.

Q. You are familiar, I believe, with what is known as the seven-acre tract that was involved in one of these Starkweather and Jenner suits? A. I am.

Q. How near to this tract in controversy in this suit is that seven-acre tract? A. It touches it on the north.

Q. Is it immediately adjoining? A. Immediately contiguous.

Q. From that seven-acre tract how do you reach Spring Road? A. By drive-way running eastward and entering Spring Road at the Reese property on the north side and the lot 24 of this subdivision on the south side.

Q. Then practically you have to go through this subdivision in controversy? A. It goes over two or three lots of this subdivision.

195 Q. In the neighborhood of this tract in controversy what improvements, if any, have been made within the last year or eighteen months? I do not mean on the tract itself, but in the immediate neighborhood? A. The extension of Executive Avenue—16th Street, otherwise known as Executive Avenue.

Q. And as to the improvements in that neighborhood with respect to buildings or things of that sort? A. The city blocks have moved up within the last year or two, one or two squares nearer, along Howard Avenue and Center Street and all around there in the Holmead subdivision—all the contiguous subdivided land is being built up rapidly.

Q. And how near to this property are those different improved streets that you have just referred to? A. One or two squares away.

Q. With the property in the conditon that you have described, namely, among other things, this dumping ground which you have spoken of—is this a desirable time to dispose of that property? A. From all my real estate experience I should say it was the most hopeless time in the world—just the time to give it away, throw it away. You could get no reasonable offer for it.

Q. What experience have you had upon which to base that opinion? What experience have you had in real estate matters? A. My mind has been more exclusively on real estate for the last twenty years than on anything else—real estate in the suburbs, subdivided properties, and I have studied them, and negotiated back and forth, and my attention has been centered on them to keep up with my own business interests, and I have always found and noted that where they are not in a presentable condition, or where rapid transit is not near them, it is useless to attempt to sell them at a profit. Those are the broad principles which govern.

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Q. When you say with respect to this particular tract that this is one of the worst times to sell it and that such a sale would be at a great sacrifice, kindly give us in detail, as near as possible, upon what you base that opinion or conclusion. A. My observation and experience of the last twenty years.

Q. Can't you give us a little more in detail what facts go to make up your experience with respect to this, or what you base your conclusion upon that if it were sold now it would be at a great sacrifice? A. At Washington Heights there was a property that I was attemptin

o purchase, several acres, above grade—20, 30 or 40 feet above grade. I found it impossible to do anything with it, and my observation in connection with that property for these years since has been that there was more than the original price of the land spent to get it at grade. It was part above grade and part below grade and it had to be substantially at grade to get it on the market and sell it. I have studied and inquired about these subdivisions through this
197 one place. And on the extension of 11th Street and 9th Street, etc., there was the same experience there—in these different real estate offices, going around to inquire—they hung year after year that way—wasn't it a remarkably presentable condition for building. It has been my observation and experience all around, but I just speak of those two. I could recall several others. These are the two that come to my mind first. Another one—at the head of Florida Avenue and 16th Street, just opposite Senator Henderson's place. There had been thousands expended to bring that up to proper grade before it could be touched at all in the market. Just so, a little beyond there where California Avenue comes in—it was below grade and for years nothing could be done with it until it was brought to grade. It seems to be a self-evident proposition.

Q. Then do I understand by your answers, and what you have stated as to the location of this tract in controversy, that the fact of its being below grade is a controlling fact with respect to its sale or disposition at this time?

Mr. LEIGHTON: Objected to as leading.

A. It is precisely that.

Q. Then if the property is being filled out in the manner that you have indicated, what effect, if any, will that have upon its value—if that is continued until the property is brought to grade? A. It will greatly enhance its value.

Q. To what extent, in your judgment, as compared with its
198 value at this time? A. It will increase its value several fold.

Q. When you say several fold, do you mean several hundred per cent., or what do you mean? A. Several hundred per cent.

Q. To the west of 14th Street, which is the nearest street that passes north beyond Spring Street? A. Sixteenth Street; 15th is not continued through. It will never be, probably.

Q. How near is 14th Street to this property? A. It is a matter of 150 to 200 feet to the east of it, and 14th Street and 16th Street are each being extended now. When I was up there the preliminary clearing work was going on.

Q. As I understood you the condemnation had already taken place? A. The trees were cut and the sod was being removed and the jury of condemnation is on. There is no legislative hindrance. It is in process of execution—the extension of those——

Q. When you say that 14th Street is within 150 to 200 feet of this property, do you mean 14th Street as now laid out and improved, or will it be that distance when it is extended? A. When it is extended.

Q. Do you know the present condition of the title to this tract? I

mean by that, do you know of your own knowledge, whether there are any existing trusts on this property? A. I know of none.
199 The only thing which looks like any alienation of title is that the taxes on three or four of those lots are assessed in the name of H. W. D. Jenner, which would indicate, possibly, a tax lien upon it in some way.

Q. Now you say you know of no trust as against this particular portion of the tract that you sold the syndicate; did I understand you right? A. I know of none. Those which were of record at one time were declared void by the action of the court in Equity Court No. 20,360, which removed all liens which then existed.

Cross-examination.

By Mr. LEIGHTON:

Q. Have you ever had any experience with any other subdivision than the Crescent Heights subdivision? A. Yes, sir.

Q. What other subdivision were you ever interested personally in and managed? A. Agassiz Park.

Q. Where is that? A. Over across the Eastern Branch; and the East Washington Park subdivision. I brought them into existence; had to do with every detail, footed every bill.

Q. Were those two subdivisions successful? A. Owing to the action of Congress and the change in the laws, just as other subdivisions in the Northwest have been, they were stranded, each
200 of them; but I had all the experience and work and the selling and the undoing of sales.

Q. But it was not a financial success, as a business enterprise—either of them? A. Owing to the action of Congress and the Pennsylvania Railroad and several other corporations——

Q. Has this Crescent Heights syndicate, which you have had to do with more or less, been successful financially up to date? A. Its financial success did not seem to me to be exactly proper and I entered suit for an accounting, etc., as you may have heard.

Q. I understand you to say that the plat attached to complainants' bill, except such as is marked with red ink, contains what is left, and now owned by the Crescent Heights syndicate? A. Yes, sir.

Q. These lots that front on Spring Road, that have red ink upon them, are all improved lots? A. They were all improved until a fire removed the improvements from one, and a freshet, an overflow, a cloudburst, removed the others, so that three or four structures have disappeared.

Q. What is the character of those that are left? A. They are frame structures that cost—would cost from $500 to $1,000 apiece.

Q. When were they built, if new? A. They are—they have been built, several of them, since the existence of this Crescent Heights syndicate.
201 Q. But the lots were sold by you prior to the coming into existence of this syndicate? A. Several of those, yes, sir; none since.

Q. They were sold to colored people? A. Yes, sir; to colored people.

Q. Colored people now own them? A. No, sir. Mostly—I think there are more white owners now than colored.

Q. Do the white owners live there? A. I am not sure.

Q. Are they not old and unsightly shanties? A. They are modern; new and modern, mansard roof.

Q. All of those cottages? A. There is one that is an old shack of a building, moved from somewhere else. There are two that are colored shanties, if you wish. There are three or four that are modern houses, fit for white people to live in; new materials, painted and modern in all ways, all appointments.

Q. Do you know whether there are any white people that live along Spring Road in any of these houses? A. I do not know the occupants.

Q. Did you see any in the houses when you were out there thirty days ago? A. I saw nobody in two or three of the houses, so there might be white people there.

Q. But to your knowledge there isn't any? A. No. It would be no disgrace for a white person to live there.

202 Q. Did you furnish the money to build these houses? A. No, sir.

Q. They were built after you sold to the colored people? A. Yes, sir.

Q. You knew they were going to build on them when you sold the lots?

Mr. FORREST: Objected to as immaterial.

A. No, sir.

Q. Did you think that sales of that character would be beneficial to the residue of the property?

Mr. FORREST: Objected to as immaterial and not responsive to the examination in chief, and in this line of examination counsel used the witness as his own witness.

A. Under the circumstances I felt certain it would not injure the property.

Q. Haven't they, as a matter of fact, injured the property—the residue of it?

Mr. FORREST: Same objection.

A. I think not.

Q. Why did you stipulate, then, for the trustees to recover the possession of those titles that you had sold?

203 Mr. FORREST: I object to that question as assuming that there was any stipulation when there has been none shown by the testimony of this witness or put in evidence.

A. I never stipulated to that effect.

Q. I understood you to say that the fronts of these lots, such of the lots as are owned by the syndicate, are on grade, are they not—on the grade of Spring Road? A. Substantially.

Q. The Spring Road intersects with the Piney Branch Road a little to the west of the land that is shown on this plat? A. Yes, sir.

Q. Is it on grade with the Piney Branch Road? A. Yes, sir; Spring Street is a little higher.

Q. A little higher than Piney Branch Road; where it meets Piney Branch it is on grade with it? A. It shoots down a little; yes, sir.

Q. Where the Piney Branch Road and the Spring Road intersect the grade is the same as it is where the Piney Branch Road—where it crosses the Piney Branch? A. The difference is not much. It is a little lower at the bridge, probably five feet lower, perhaps, which is over 200 feet away.

Q. On the same grade? A. Same general grade, yes, sir.

Q. I understood you to say there is a ravine runs through
204 this property? A. Yes, sir; there has been a sinking, a hollow, hardly a ravine.

Q. This ravine has been filled up by the dumping of refuse, old tin cans and ashes and things of that kind? A. Yes, sir.

Q. And you think that this is improving it? A. I have never—I do not recall expressing myself on that subject.

Q. But what did you say about it? A. I say when it is elevated and the top dressed it will be a vast improvement.

Q. Then your opinion is that the dumping of ashes and old tin cans and things of that character is an advantage rather than a disadvantage? A. As a matter of immediate sale it is not. The ultimate result will be beneficial.

Q. You mean if it is filled in that mode and then some earth is put on top and it is sodded down so that people won't know what is on the bottom you can sell it better? A. I mean to say it is the usual way of filling low land about cities—in the suburbs.

Q. Then you approve of the dumping of this refuse there? A. Under the circumstances I do not see that anything could be done better.

Q. You don't know who authorized it or whether it is
205 authorized by anybody? A. No, I don't know anything about that.

Q. Right on the opposite side of Spring Road, to the south, is the residence of Blake Kendall, isn't it? A. It is.

Q. On an elevated knoll? A. Yes, sir.

Q. About 75 feet above the grade of Spring Road? A. No, sir about—The house stands 35 to 40 feet above Spring Road.

Q. The improvements on 16th Street extended have not been made across Piney Branch? A. Not yet.

Q. How far to the west or to the south of Piney Branch Road are they now? A. Thirty days ago they were a matter of 150 feet.

Q. How high above the grade of Piney Branch is 16th Street? A. It is to be—that is, the grade you can see there is a matter of 40 feet above Piney Branch.

Q. And if that grade is maintained—— A. As it will be——

Q. —across this tract of ground it will leave it more than 40 feet in the hole, won't it—or below the grade of 16th Street? A. It will.

Q. You say that 16th Street runs across this land? Was
206 it condemned, any part of it, do you know? A. Possibly a very few feet. Quite a portion of the seven-acre tract adjoining, which is related to this syndicate, has been condemned.

Q. For the purpose of the extension of 16th Street? A. Yes, sir.

Q. Do you know, as a matter of fact, whether any part of this tract is touched by 16th Street? A. The nearest to positive proof I have is the diagram in your hands there (indicating)—this plat which has been shown me. According to that a very few feet are taken.

Q. What do you see there (indicating plat) that indicates that? A. The red line, right there (indicating)—about a square rod or two are taken. This is 16th Street.

Q. That is, you assume it is 16th Street? A. I know it. Am very familiar with it.

Q. There is nothing in that—the red line itself to indicate that it is 16th Street, is there? A. No, but I have seen hundreds of these maps and plats.

Q. There is nothing on the surface of the ground itself, no surveyor's marks or monuments to indicate where 16th Street was when you were out there? A. Yes, it is burned all the way through—blazed; there are all kinds of marks and indications.

Q. Were there any surveyors' pegs on this ground owned
207 by the syndicate? A. I cannot say that there were or that there were not. I didn't look close in there. It was a little unpleasant to cross there at that particular day.

Q. Do you know at what grade 14th Street will cross the Spring Road? A. Yes, sir; about ten feet above.

Q. Where did you get that measurement? A. From studying the land and from intercourse with one of the appraisers.

Q. You never yourself saw the grade sheet prepared by the Surveyor of the District? A. I have studied the grade sheets every little while.

Q. I mean for the extension of 14th Street at this point across Spring Road? A. I have not examined them for testifying in this case.

Q. Then your statement that the grade of 14th Street where it intersects Spring Road will be ten feet, is simply a case of surmise? A. It was the statement of one of the appraisers in answer to my direct inquiry.

Q. When 16th Street is extended as proposed, what will be the grade of these lots? Will it be on the basis of the 16th Street level, the 14th Street level or the Spring Road level? A. Spring Road will be impassable until this grade is brought up to that of Blake
Kendall's and the Crescent Heights property. It is inevitable
208 that that "steamboat lot" be raised substantially 40 feet in height. Of course it may not have to be over 30 feet at the upper end; 40 feet at the west end.

Q. If it is raised above that it will close the spring there and close Piney Branch Road, won't it? A. They will have to rise with it or disappear.

Q. Be submerged? A. Be submerged.

Q. Would you take these lots as a present on condition that you bring them up to the grade of 16th Street?

Mr. FORREST: Objected to.

A. I would, most gladly.

Q. Isn't it your experience that it is a good time to sell property when improvements are about to be made in its vicinity—acreage property? A. No, sir; just the time to hold.

Q. You think the proper way is to wait until after the improvements are made and then sell? Is that your experience, or have you had any in that line? A. My observation and experience is to wait until the improvements are made.

Q. On which of these lots (indicating plat) is that house that you say the syndicate still owns? A. On lots 11 and 12.

Q. Do you know anything about who has collected the rents of that house since the formation of the syndicate? A. No, sir;

209 Q. Do you know whether anybody has? A. Yes, sir; and I used to hear Mr.——

Q. Do you know of your own knowledge? A. I used to hear J. O. Johnson and H. W. T. Jenner tell me from time to time. My latest knowledge is from the tenant there.

Q. What does the tenant say about it? A. He says it is one Russell, who is agent for one Mr. Levy, that Levy has all those

Q. Who is Levy? A. He is a builder and owner. Was the owner of two houses there of the Robinson purchase. He built two houses on the Robinson land there, and I was told by people along the street there that he controlled everything and delegated it to this man Russell, the real estate collector.

Q. Of your own knowledge you don't know whether that is true or not? A. I do not.

Q. Did you build the house? A. I built no house.

Q. Who built this house on the syndicate lot? A. Albert Lewis the owner, to whom I sold. He was a builder and he built it for himself.

Q. And the property, you think, was bought back by the syndicate after it was sold by you? A. I know that it was. Was a party to it.

Q. And you don't know whether it has been sold to Levy

210 or not? A. I do not know. I was informed that it was the syndicate's property the other day by the tenant.

Q. I thought you said you were informed that Levy owned it? A. That he had the charge, the manipulation of it, that Mr. Jenner had been there collecting for a while, that he turned it over to Levy and Levy turned it over to Russell—that was my information; not a matter of purchase.

Q. As a matter of fact, of your own knowledge, you know nothing about it? A. I know nothing but what I saw.

Q. If this dumping continues it will gradually fill up around these dwelling houses and cover them up, won't it? A. If they don't get jack-screws under them.

Redirect examination.

By Mr. FORREST:

Q. You said you thought it would be better to hold the property until the improvements in the neighborhood were completed. What improvements do you refer to—street or public improvements? A. Until the street- are put through and graded; that is what I mean. In that whole section for six or eight squares around there are immense improvements going on. The extension of streets and the cutting of lots—there is an excess of earth. While ashes and refuse is being put in there, there is a great demand for a dump and
211 that will rise without cost—merely the cost of paying taxes and holding. People are ready, even glad to pay something for the privilege of dumping there. There is an immense amount in that immediate section there, within a radius of five or ten squares, to find a dumping place for the excess of dirt.

Q. Excess of surplus earth? A. Good, pure earth—virgin soil.

Q. Was that, or not, one of the reasons that induced you, in answer to Mr. Leighton's question, to say that you would accept the lots if given to you? A. It most certainly was.

Q. Something was asked you about the success of your Crescent Heights Syndicate. Let me ask you who, if any one, had the management of this syndicate since its formation, whether or not you had anything to do with its active management? A. I had nothing to do with its active management. I was powerless.

Q. Who had the active management of it? A. Trustees Croissant and Johnson.

Q. And, so far as you know, what connection had Mr. Jenner, the complainant, with the active management? A. Simply the supervision and control which he has exercised almost from the incipiency of the syndicate.

Q. Do you know the name of the tenant who lived in the syndicate house? A. I haven't got it. I used to know it but it has gone from my mind.

Q. Was he a white or a colored man? A. A very respectable colored man.

GEO. B. STARKWEATHER.

212 Subscribed and sworn to before me this 3rd day of Oct. 1905.

MARGARET M. MURRAY,
Examiner in Chancery.

Adjourned until 1:30 P. M., Wednesday, May 17, 1905.

WASHINGTON, D. C., *May* 17, 1905—1:30 p. m.

At 1:30 P. M. the parties met pursuant to adjournment. Owing to the absence of Mr. Leighton, of counsel for complainants, after

waiting until ten minutes to two an adjournment was taken until Thursday, May 18, 1905, at 9:30 A. M., at same place.

WASHINGTON, D. C., *May* 18, 1905—9:30 a. m.

Parties met pursuant to adjournment and continued the taking of testimony on behalf of defendant Starkweather.

Whereupon PERCY H. RUSSELL, having been first duly sworn, was examined and testified as follows:

213 Direct examination.

By Mr. FORREST:

Q. What is your name and occupation? A. My name is Percy H. Russell. My business is real estate, loans and insurance.

Q. You are engaged in that business in this city? A. Yes, sir.

Q. How long have you been so engaged? A. About twelve or fourteen years.

Q. And in such real estate business do you collect rents as agent? A. Yes, sir.

Q. Do you know a piece of property which lies immediately north of Spring Street in the County of Washington and which is improved by some frame dwelling houses, between 14th and 16th Streets? A. Yes, sir.

Q. Have you, and if so, for what period, collected rent from any of the buildings on that strip of property to which I have called your attention? A. I collect rents for several properties there but only remit to Mr. Jenner for one of the properties. In other words they are separate ones. I have other properties in addition to this.

Q. Who is the tenant for the piece of property that you collect the rent for for Mr. Jenner? A. Samuel Jones.

Q. White or colored? A. A colored man.

214 Q. What amount does he pay by the month? A. He pays, I think, five dollars a month.

Q. How long have you been collecting that rent? A. Well, approximately—I can't be definite without referring to my books.

Q. Approximately will do. A. Six months, approximately.

Q. And to whom do you account for that rent? A. Mr. Jenner.

Q. Do you know his full name? A. I think it is W. T. H. Jenner. It seems to me there are three initials.

Q. Do you know where his office is? A. It is on the south side of F Street between 6th and 7th.

Q. Do you know what business he is in? A. I think he is a patent attorney.

Q. What condition is that house in now, if you recall? A. Well, I haven't examined the interior of the house. I have only been in one room. I cannot testify as to the condition of the upper room because I have never been upstairs. The exterior is in fair condition. It needs painting but the rest is all right. The roof has been leaking and we have made several attempts to fix it. I think it is in pretty good shape now.

Q. Who engaged your services as real estate agent? A. Mr. Jenner.

215 Q. Do you know who collected that rent prior to your doing so? A. I understood, but I couldn't testify of my own knowledge——

Mr. LEIGHTON: Objected to unless he can state of his own knowledge.

Q. From whom did you get your understanding as to who collected the rent prior to you doing so? A. Mr. Jenner, and also the tenant, Mr. Jones.

Q. Who did Mr. Jenner say collected the rent before? A. No one had collected it for years. The tenant hadn't paid any rent for years.

Q. You got that statement from Mr. Jenner? A. And also from Mr. Jones, the tenant.

Cross-examination.

By Mr. LEIGHTON:

Q. Was Jones in possession of the property when you took hold of it? A. Yes, sir.

Q. Jones himself said he had not paid any rent for years to any one? A. I accused him of it and he admitted that he hadn't. He said no one had ever called on him for rent.

Q. Did he claim to own the property himself? A. Oh, no; no, sir.

Q. Do you know the amount of rent you turned over to
216 Mr. Jenner? A. I couldn't tell without reference to my books.

Q. You spent something in repairs? A. Some few dollars; not much.

Redirect examination.

By Mr. FORREST:

Q. Does the tenant pay promptly—reasonably promptly? A. Yes, sir.

PERCY H. RUSSELL.

Subscribed and sworn to before me this 4 day of Oct. 1905.

MARGARET M. MURRAY,
Examiner in Chancery.

Whereupon GEORGE B. STARKWEATHER, was recalled for further examination.

By Mr. FORREST:

Q. In the testimony on behalf of the complainants in this case, Mr. Speer has referred to certain meetings of the syndicate holders at different times. Were you ever notified, previous to any such meetings, to attend as a shareholder or certificate-holder in the

syndicate? A. I was not notified in time and manner to admit of my attending. I knew nothing of their counsels and doing.

Q. In your examination you spoke about there being no
217 loan or encumbrance upon the property involved in this cause, and I understood from you that you wanted to make some explanation about that, particularly with respect to equity cause No. 16,612. What was that? A. In answering the other day I intended to say that I knew of no existing trusts upon that property but its title is clouded by equity cause No. 16,612, in which I am complainant, and possibly one equity cause which I cannot designate by number, if it is still a cloud upon the title of that property. No settlement has ever been made with me for the purchase thereof.

Q. With respect to this property and its su-ceptibility of partition among the parties in interest, in your opinion is that property susceptible of partition in kind among those who hold interests in it represented by certificate shares? A. It is.

Q. State why you say it is susceptible of partition in kind. A. I have since testifying the other day examined the property, examined the plats and all the circumstances connected therewith, and I see how it can very readily be subdivided—partitioned—although as I said the other day, I think it most inopportune and inexpedient to make any disposition of it at the present moment.

Q. Now, have you, in coming to this conclusion, drawn any plat or plan of such a partition? A. I have.

Q. Will you produce it? A. I find there are, according
218 to the plats, a matter of 100,000 square feet in this steamboat lot, so-called, and there is remaining from two to three acres of the syndicate.

Q. Is the plat before you the one you made? A. It is a tracing from the original plat that I received at the time of purchase of the property.

Q. Is it a correct copy of that original tracing? A. It is, and corresponds substantially with all of the diagrams that I have seen of that property.

Q. By way of illustrating your testimony, will you explain from that plat, if you can, how such a partition could be made? A. The plat is seven hundred and odd feet in length from east to west and from 150 to 200 feet wide from north to south. The Spring Road is twenty-five feet wide and passes along the southern border of this tract. There are seven alien holdings along this line of over 700 feet, occupying less than half, possibly two-fifths of the frontage. Sixteenth Street extended cuts a little from the western border of this tract. Along the northern line, just cutting a few feet most of the way along its margin, is a projected 90-foot drive or boulevard, connecting the Soldiers' Home with the Zoo and the National Park following down Piney Branch. It is projected in connection with the Grand Park System of the City of Washington and in connection with Executive Avenue or Sixteenth Street will make this a most valuable point or corner. There are twenty-four syndicate certificates extant, I am informed, fifteen of which are controlled by two

holders. The other nine certificates may have various hold-
219 ers. I have indicated by red lines here (indicating plat) an easy way of subdividing this so that each one could have his pro rata of land. The easternmost and westernmost ends—extremities of this I have allotted to the two large owners, or indicated that it might be so done, while the central third of the tract can be divided into strips of about 30 feet wide, giving to each holder of a certificate over 4,000 square feet or more than two of the average lots in this subdivision, each of these pieces having a frontage on both Spring Street and this new boulevard on the northern side, not yet named. The nearest named street towards the National Park is Columbus Avenue there. When this proposed boulevard is a reality, the Spring Street frontage will be little more than an alley. The real frontage is to the north.

Q. The partition such as you have stated, would that be a partition in kind, do I understand you, among the parties in interest according to their respective shares of this property? A. It would.

Mr. LEIGHTON: The question is objected to as leading.

Q. This proposed boulevard that you refer to, Mr. Starkweather, if that is put through there and becomes an accomplished fact, would there not be more or less grading done in its building? A. There would be considerable; quite a large quantity of earth would be removed of necessity.

Q. And this boulevard that you refer to, you say would
220 take away a portion of this three-acre tract? A. A very slight portion.

Q. As I understood your testimony the other day, this seven-acre tract is immediately north? A. It is.

Q. Now, what portion of the seven-acre tract would that take, if any—this proposed boulevard? A. It would take a strip nearly or quite 700 feet long and on an average of about 85 feet in width.

Q. Would that require the grading of this seven-acre strip? A. It would necessitate the grading of the whole seven-acre tract to render it marketable property.

Q. You have spoken of various improvements that are contemplated in this section. Have they in any way been brought to your notice publicly, by advertisement in the newspapers, or anything in that way? A. There were first brought to me a month ago when I was on the property. I saw smoke near by, as near as across Judiciary Square here (indicating) and I went over to see if the woods were on fire and I learned what it was, and have since seen it advertised in the public press.

Q. Have you a copy of such advertisement? A. I think I have a copy. Here is one (producing advertisement): February 26, 1905, in the Washington Post.

Mr. LEIGHTON: I desire to interpose an objection against allowing this examination to go on, as the testimony is irrelevant
221 and incompetent and bears upon no issue that we have here, and, further than that, it is hearsay.

Q. You say that it came to your notice through the press? A. Through the press; yes, sir.

Mr. LEIGHTON: Same objection; and also that the question is leading.

Q. What is that advertisement or notice that you have, Mr. Starkweather?

Mr. LEIGHTON: Same objection.

A. (Reading:) "Mount Pleasant Heights, the new addition just west of 14th Street extended, by Fulton R. Gordon, Robert E. Heator, manager, Colorado Building."

Q. Is that the neighborhood where this Spring Street property is located? A. Yes, sir, it is near—it lies to the west as near as across Judiciary Square from here, right in sight.

Q. When you say it is towards 14th Street extended, which direction do you mean, that it is north or south of this place? A. Due west almost. I have known the street which crosses on Piney Branch there to be called for years 14th Street extended, and he evidently uses it in that way. Some call it Piney Branch Road, that drive which comes up through Argyle, through the Blagdon property. This syndicate property corners—its first line is the first line of Argyle, also a stone right there by Piney Branch.

222 Q. How close to this property in controversy? A. It is within 1,000 feet; much less, 800 feet, probably.

Q. And you say due west of this? A. West, slightly to the north of west.

Mr. FORREST: For what it is worth we offer in evidence the paper that Mr. Starkweather has in his hands, and the same is marked by the Examiner "G. B. S. No. 1."

Mr. LEIGHTON: Same objection.

Mr. FORREST: And we also offer in testimony the plat prepared by Mr. Starkweather, and the Examiner marks the same "G. B. S. No. 2."

(Cross examination deferred for the purpose of taking testimony of other witnesses whose engagements necessitate their leaving.)

Whereupon WILLIAM P. RICHARDS, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Q. What official position, if any, do you hold in the District of Columbia? A. Surveyor of the District of Columbia.

Q. How long have you occupied that position? A. Since January of the present year.

Q. And before becoming surveyor of the District what
223 position, if any, did you occupy under the District Government? A. Assistant Engineer in charge of Street Extensions.

Q. Does any part of your work incident to street extensions now fall within the line of your duties in the Surveyor's Office? A. Yes, in a general way.

Q. Do you know the location of the property involved here which fronts on what is known as Spring Street and which lies between 14th and 16th Streets when extended, and which belongs to what is known as the Crescent Heights Syndicate? Do you know the general location of that property? A. Yes, sir; I know the location of the property, just north of the Spring Road.

Q. There are probably six or seven frame houses on it; does that in any way identify it in your mind? A. Yes; and a stream running back of them.

Q. Do you know of the proposed extention of 14th Street and 16th Street? A. Yes, sir.

Q. And of the grades that will have to be made when those streets are extended? A. Yes, I have studied out the grades in both cases.

Q. Now, where 14th Street, as extended, passed the Spring Road, with reference to the present grade of the Spring Road, what would be the grade of 14th Street? A. Where it crosses Spring
224 Road it is 9 feet above it.

Q. And do you recall the difference in grade of the front of the lots which front on Spring Road and the rear of that property, say, about 200 feet to the north? A. When you get 200 feet north of the Spring Road you strike a ridge which is about the same elevation as the proposed grade of 16th Street.

Q. And the proposed grade of 16th where it crosses Spring Road would be about what? A. About 40 feet above it.

Q. Then do I understand that the proposed grade of 14th Street, as extended, and 16th Street, as extended, would be about the same in height as it passes Spring Road? A. Oh, no; not necessarily. Fourteenth Street would be about 9 feet above Spring Road.

Q. Now, in the proposed extension of those streets will there be more or less grading done? A. Yes, a great deal.

Q. Will that be in the way of filling up or reducing the grade? A. There will be a great deal of filling and cutting too.

Q. Do you know anything about the filling in of the lots just north of Spring Road by surplus earth in that neighborhood, or does that come within your notice as surveyor? A. No, I
225 have nothing to do with it.

Q. Immediately north of Spring Road, at a distance of about 200 feet, is there not a proposed boulevard that would run east and west? A. No, I couldn't call it a boulevard.

Q. What would you call it? A. There was a proposed scheme, that was abandoned, at one time.

Q. Is there a proposed street, then, at about that distance from Spring Road, that is to pass east and west? A. There is a proposed street now just north of Spring Road, passing east and west, I should say about 150 feet north of Spring Road measured along the east side of 16th Street. That proposed street will pass to the east and take in Spring Road or street and will pass to the west down into the Piney Branch valley. It is laid out as 90 feet in width.

Q. Does it take in what is now Spring Road? A. Now what is Spring Road at 16th Street. It starts in on the ridge north of Spring Road, and running to the east, joins with Spring Street about 300 feet east of 16th Street.

Q. Spring Street or Spring Road is not a street that runs east and west? A. No, sir.

Q. At what point, can you recall, does it diverge from a straight line going east—approximately at what point? A. About
226 200 feet east of 16th Street; I should think about that.

Q. That would be about 200 or a matter of 300 feet due east of 16th Street where this proposed road would strike it? A. Well, it begins to bend before it gets into Spring Road; I believe about 300 feet.

Q. And where it strikes 16th Street extended would that be at a point of 150 or 200 feet north of the present Spring Road? A. Yes, about that.

Q. In that proposed street would there also be more or less grading or filling? A. There would be some cutting in there on the east side; filling on the west side.

Q. So that these streets when extended will leave Spring Road and those lying immediately north of it, considerably below grade? A. Oh, yes.

Q. Running all the way from 9 feet up to 40? A. Yes, sir.

Cross-examination.

By Mr. LEIGHTON:

Q. What was the name of this street or boulevard that you say was abandoned? A. Nameless.

Q. This proposed east and west street that merges into Spring Road, is that a straight street or will it follow the windings
227 of Spring Road after it strikes it? A. When it gets into Spring Road it follows along Spring Road in a direct line Spring Road is not bent after that.

Q. It will co-incide, then, with Spring Road—simply be wider? A. Yes.

Q. Do you know whether it is proposed to take anything off of this property at the lines right to the north of Spring Road—off of the property in controversy—by the extension of this street? A. I think it does, but I would rather refer to the map to answer that.

Q. It takes from both sides, north or south, or don't you know? A. I would like to know what you mean by the limits of this property.

Q. It extends about 700 feet, I believe, along Spring Road, and its western end abuts upon 16th Street when extended. A. Yes. Considering that this property has a depth of 200 feet north of Spring Road, the street running east will cut a slight amount from the property.

Q. How much you cannot tell without looking at the map? A. I cannot tell without looking at the map.

Q. In what shape is the legislation for this proposed east and west street? A. There is none.

Q. It is simply a scheme of the Commissioners to be put in
228 force at some future time? A. Yes, sir.

Q. It cannot be put into force unless there is some Act of Congress authorizing it. A. Only that way, and by the donation of the land.

Q. That is, the parties themselves voluntarily giving to the District the land requisite for the street extension? A. Yes, sir.

Q. That suggested street has no name as yet? A. No, sir.

Q. When the District shall acquire the land for the extension of 14th Street will its grading operations extend beyond the lines of the street? A. No.

Q. Will they need all the earth that they can obtain in order to meet the requirements of the fill? A. Yes, sir.

Redirect examination.

By Mr. FORREST:

Q. You are familiar with the general plan that was adopted by the Commissioners as to the extension of streets beyond the boundary lines of the city? A. Yes, sir.

Q. And was this proposed street that you refer to laid out as one of the streets to be improved by that plan? A. Oh, yes, sir. On the first section of the permanent system of highways.

229 Q. And any subdivision that is made now or proposed to be made by an owner would have to conform to that proposed street? A. Yes, sir; if it was desired to make it a matter of record.

Recross-examination.

By Mr. LEIGHTON:

Q. A subdivision could be made by making and attaching the subdivision plat to a deed and recording it in the Land Records? A. That could not be done. There is a statute forbidding it.

WM. P. RICHARDS.

Subscribed and sworn to before me this 4th day of Oct. 1905

MARGARET M. MURRAY,
Examiner in Chancery.

Thereupon the parties adjourned until 1:30 P. M., Friday, May 19, 1905, at the same place.

WASHINGTON, D. C., *May* 19, 1905, 1:30 p. m.

Parties met pursuant to adjournment and continued the taking of testimony.

Present: B. F. Leighton, Esq., for complainants, and Messrs. Edwin Forrest and Richard P. Evans, representing defendants.

230 Whereupon FULTON R. GORDON, having been first duly sworn, was examined and testified as follows:

Redirect examination.

By Mr. FORREST:

Q. What is your name and occupation? A. Fulton R. Gordon, my business is developing suburban property—real estate.

Q. Give us a little more in detail what you mean by developing property? A. I buy up large tracts of desirable ground and cut them up into lots and sell them, building houses on them; have been doing that for almost fifteen years exclusively.

Q. In this District? A. Principally in the District; some little in Maryland.

Q. Do you know where the property in question in this controversy is located? A. I do. I have the plat before me.

Q. Have you in the vicinity of that property ever made any subdivision? A. Yes, sir. Made two right near.

Q. Within what period? A. Within the last two or three years I am making one there now.

Q. Are you not also familiar with the lay of the ground of the property involved here, just north of Spring Road? A. I

231 am, sir.

Q. It has been testified to here in this case that the plat correctly represents the property in its dimensions, etc. A. Yes sir.

Q. You say that you are familiar with the lay of the land there Just state, in a general way, what its condition is. A. It is below grade, a good part of it; it is used for an ash dump and other matter they put on there. It is rather a rough piece of ground. It has some inferior shanties on one part.

Q. How does it lie with respect to Spring Road—that part of it that is immediately north of Spring Road? A. Why it is very much below that part.

Q. Below Spring Road? A. Below Spring Road and below the ground just north of it.

Q. How much is it below grade of Spring Road, do you estimate? A. I would have to approximate it. At the lowest point would say as much as ten feet in places; some a little less.

Q. How is it as to the remainder of the property, for instance after you go a distance of 50 or 75 feet immediately north of Spring Road? A. Well, 50 feet north of Spring Road I would say it was very low there, but after you go farther it rises up some

232 Q. Where does that rise begin—that is to say, about how far north of Spring Road? A. I would say from 50 to 100 feet.

Q. Is it a precipitous rise or a gradual rise? A. It is gradual it is quite steep in places.

Q. And at the highest point of that rise, say 200 feet from Spring Road, how far would you say it was above the grade of Spring Road? A. I would say from 10 to 20 feet.

Q. What is the character of the soil in that rise? I mean by that, is it clay or sandy or rocky or what it is, so far as you are advised? A. I haven't examined it close enough. I know from ground right near what kind of ground that is, but this little spot I haven't examined close enough to answer.

Q. It has been testified to here by the Surveyor that according to the general plan of the extension of streets as adopted by the Commissioners there will be a roadway immediately to the north of this tract in question, that is, running east and west through a portion of this tract and taking a portion of the tract immediately north. A. Yes, sir.

Mr. LEIGHTON: Complainants' counsel objects to this interrogatory and states that the Surveyor did not state that there was a road to the north of this tract. On the contrary, he stated that the paper road that was talked of was abandoned, and that there was no law authorizing any street, but that the Commissioners did pro-
233 pose at some time to widen Spring Street Road or make a road to the south of this lot.

Mr. FORREST: Without answering the criticism in detail, counsel submit that the record does not agree with the argument made.

Q. If such a road is built as projected, what effect would that have upon the value of the ground immediately adjacent thereto?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial. We are dealing with the ground in its present condition, not with any future condition.

A. A street put through there in this way would increase the value of the ground on both sides of that street.

Q. And to construct such a street through there would it, or not, involve a considerable reduction of the present grade of the lot?

Mr. LEIGHTON: Question objected to for the reason above given.

A. Unless I knew the exact grade of the street I could hardly answer that question.

Q. The exact grade of the street has not been shown by the testimony, but is it to be, according to the testimony of the Surveyor, an extension of a street to the east of this tract and running through it at the north in a westerly direction.

Mr. LEIGHTON: Question objected to for the reason above stated.

(Question repeated.)

234 A. I would have to know all the grades definitely to answer that.

Q. It has been testified to by the Surveyor that the grade of 16th Street when extended would be at a height of about 40 feet above the present grade of Spring Road, and the grade of 14th street extended about 9 feet above the level of the present Spring Road, and that the extension of these streets would about meet the northern boundary of this property on a level.

Mr. LEIGHTON: The mode of putting this question is objected to as it is entirely irrelevant and incompetent and does not in any way correctly represent the statement of the Surveyor.

Q. In other words, what I mean by the question is that when 16th Street is extended and 14th Street is extended at the respective heights named, these two streets will be practically on the same grade? A. Yes, sir.

Mr. LEIGHTON: The question is objected to for the reasons above stated.

Q. If you know, and assuming that to be a fact, how far above or how far below the grade of those streets, if so extended, would be the northern end of this property known as the Crescent Heights Syndicate property?

Mr. LEIGHTON: Question objected to for the reasons above stated.

A. If the Surveyor's statement is correct that would put the northern line of this property on grade where they abut at 14th and 16th Streets.

235 Q. It appears in the testimony in this case that there are 24 outstanding certificates held by different persons, each representing a 1/30 interest in this property, and that about 8 of those certificates are controlled by one person and about 7 by another, and the remainder of the 24 controlled in great part, if not wholly, by persons owning or controlling one interest only. Now with that plat before you, and the lay and condition of the property that you have testified to, is that property susceptible of partition in kind among the parties interested?

Mr. LEIGHTON: The question is objected to as not the proper mode of getting the opinion of the witness and as being immaterial and irrelevant.

A. Yes, sir; that property could be subdivided on those lines as indicated here—(indicating)—very nicely.

Q. With your knowledge of the condition of the real estate market and the condition and lay of this property, as you have testified, is it or not, in your opinion, a good time for a sale of this property, if the court should so decree it?

Mr. LEIGHTON: The question is objected to as irrelevant and immaterial.

A. No, I don't think it is a good time to sell this property. I think it would sell a great deal better later and after it was put in better shape for sale. It is in very unsalable shape at present.

Q. What effect upon its value would the extension of these
236 two streets have, 14th and 16th Streets, when completed?

A. It would increase it very materially.

Q. Now, these two tracts that you say you were interested in, how close are they to this property? A. Why, I would say that one of them is about two ordinary city blocks and the other one about one ordinary city block from it.

Q. Have the lots in either one of those subdivisions been put on the market for sale? A. Yes, sir; they have.

Q. And has there been any advertisement of that fact? A. Yes, sir.

Q. Look at that exhibit (marked "G. B. S. No. 1") which has been introduced in evidence here, and tell me whether or not that is the advertisement to which you have referred? A. It is. That is one of our advertisements—of one of those subdivisions within a square of the property.

Q. Was that prepared by you or under your supervision? A. I wrote that advertisement myself.

Q. Have you read it lately? A. I have just looked over it here. I write them; of course that is better than reading them.

Q. The different matters that you refer to there, with respect to property in that neighborhood and its conditions, what do
237 you say as to the truth of those? A. They are correct, sir, as near as I know.

Q. What road does that subdivision rest on or is approached by? A. Fourteenth Street or Piney Branch Road. It fronts on that.

Q. When you speak of 14th Street, is that the same 14th Street that we speak of when extended? A. No, sir; that is, Piney Branch Road and 14th Street extended are vey near to each other but they are different streets.

Q. Does this subdivision lie to the east or to the west of 14th Street extended? A. Which subdivision?

Q. The one that you have last referred to, the advertisement of which is in your hand? A. West.

Q. How close to 14th Street? A. A square and a quarter to new 14th Street extended.

Q. Is it north or south of the property involved here? A. Just a little northwest of it.

Mr. FORREST: I again offer this paper in evidence, marked "G. B. S. No. 1."

Cross-examination.

By Mr. LEIGHTON:

Q. When you testified that if a street is put through east
238 and west to the north of this tract of ground, that, in your judgment will enhance its value? A. Yes, sir.

Q. What connection could be made with north and south streets if such a street were put through? A. Well, they could connect with 14th and 16th Streets very nicely.

Q. That would necessitate the filling of this lot to bring it up to the grade of 16th Street? A. That would depend. According to the testimony of the Surveyor, as stated to me here, the streets about meet on grade there; 14th and 16th would about meet on grade.

Q. Are not 14th and 16th Streets parallel streets? A. Yes, sir.

Q. How will they meet there on grade or off? A. Where the cross streets strike them; where they meet, according to the Surveyor's statement, going through the tract here.

Q. You mean that when 16th Street is extended—— A. At the north line of this property, according to the statement we have.

Q. (Continuing:) —it would be on a level with the north line of this property? A. I understand so; yes, sir.

Q. And that is the theory upon which your testimony has been given as to this cross street? A. Yes, sir.

Q. That is the basis upon which you have testified? A.
239 Yes, sir; that is the basis.

Q. Supposing you were told that the extension of 16th Street would leave the northern portion of this tract below grade about 40 feet, what would be your—— A. The cross street would still help it.

Q. Would it not require the bringing of this ground all up to grade? A. Yes, sir; it would.

Q. Wouldn't that destroy all of those houses that are now on Spring Road?

Mr. FORREST: I object to this statement of counsel, as he has been asking the witness about the northern line of this property and in that same connection he has now spoken of the property immediately fronting Spring Road, which has a tendency to confuse the testimony of the witness as to the two different parts of the property which he is asking the witness questions about.

Q. How far away is the northern end of this property from Spring Road? A. I have no scale to go by here but I would judge probably 250 feet.

Q. Do you judge that by the plat you are looking at or do you judge it by measuring it with your eye? A. By both.

Q. On that plat at which you are looking are there any figures to indicate distance? A. None.

Q. How can you tell then? A. I know the ground, and I saw another map here just now. I do not know that I am right
240 but I would say about 250 feet.

Q. How can you tell what is the distance between the rear of that lot and the part of it that fronts on Spring Road by looking at a plat that has no figures on it? A. I have just looked at another plat that did have lines and figures on it.

Q. And is that the way you judge? A. I do not claim that my statement of 250 feet is accurate; I only say approximately.

Q. You suppose it is 250 feet? A. Yes, sir.

Q. Assuming that it is now 40 feet below grade, as testified to by the surveyor, will not the filling of the lot necessarily destroy the houses that front on Spring Road?

Mr. FORREST: Objected to as immaterial and irrelevant.

A. Spring Road can be used for a cheap class of houses in its present condition without any grading.

Q. That is not answering. I am asking whether it would destroy these houses? A. Not necessarily.

Mr. FORREST: The question is objected to as irrelevant and immaterial, the parties interested in this cause not having any interest in

any of the frame houses on Spring Road except the one occupied by the tenant Jones.

241 Q. Why not? A. Well, the distance from this north side to Spring Road is sufficient to allow a row of lots on the north street without probably disturbing these houses.

Q. Without probably disturbing them? A. I do not think they need be disturbed.

Q. That would leave them below grade the same as they are now and a bank of earth to the north 40 feet in height. A. If these grades are correct; yes, sir.

Q. Would that be of great benefit to the houses so left?

Mr. FORREST: Objected to as immaterial.

A. These houses are of such an inferior grade I don't think you can damage them much any way you handle them. To cover them up would be a good thing, I think.

Q. Now, you have testified that that can be subdivided in kind? A. Yes, sir.

Q. Do you mean that that is the best way to dispose of that tract of ground, to sell it, to sub-divide it among the parties in interest, or do you think that better results could be obtained by selling it as a whole and dividing the proceeds?

Mr. FORREST: Objected to as irrelevant and immaterial.

A. You want to know the best way to handle that property?

Q. I want to know the best way to handle it? A. It is to
242 plat it to conform to the permanent plan of city streets, and bring it up to grade, and sell it off in individual lots, one, two and three lots to different people.

Q. That would involve the sale of the entire tract in order to accomplish that result; it would involve the ownership by a single individual, unless all the owners would agree. A. That is a matter for them. Of course they have got to agree on that.

Q. What is your answer—would it or not be for the interest of the parties who own that property to sell it in its entirety or to divide it in kind between them, assuming it to be capable of such division?

Mr. FORREST: Objected to as irrelevant and immaterial.

A. If it is divided into small lots it would enable the parties to sell it off in small lots and put it in better shape for the market and I think they could get more out of it. I don't think it would sell well in its present condition. It is in a horrible condition. It is an ash dump for that section around there. It is in very bad shape.

Q. Supposing a man owned a single lot there, would it pay him to grade it or improve it, or would it be practicable? A. He could wait until some better time to sell. If he owned a single lot he couldn't afford to fix up all the other property to sell one lot, unless it was a good large lot.

243 Q. Supposing that you owned one undivided 1/24th interest in that property would you think it to your interest that that 1/24th be separated to you, set off to you, or that the whole of

that property be sold and you be permitted to buy or bid upon it if you chose, for the whole tract, and the proceeds divided. How do you think the best result could be obtained?

Mr. FORREST: Objected to as immaterial and irrelevant and not a proper question to put to the witness. The question here is whether or not that property is susceptible of partition, not how the witness might view it from an individual or personal standpoint.

A. Well, if I were able to buy the property in myself, I think I could make more money by letting them sell it and buying it in at a low figure, but if I were not able I would rather have my one little lot by myself and wait for a better time to sell.

Q. If there were a market for the property you would consider that the best way to obtain the results out of it for the share-holders would be to sell it in bulk rather than to divide it in kind?

Mr. FORREST: I object to that, as I do not understand the witness to have so testified. A. It is all right to sell the property in bulk but it is not in condition to sell and it would bring a much better price later than now.

Q. Why? A. On account of the extension of 14th and 16th
Streets and the building of this bridge and the general de-
244 velopment of the city there which is very extensive. The city is building very fact there. But this property is in horrible condition at present.

Q. Do you know whether 16th Street is to be extended across this tract and across the Piney Branch Road by bridge or by grade? A. There has been an appropriation for some kind of a bridge there. They are going to do lots of grading there too. I don't know exactly how it fits in there. They have got to grade up to this property—to the approaches.

Q. Which part of this tract is the most valuable? A. The northern part.

Q. Why do you say that? A. Well, assuming that this street is going to be run through there, it is a broad street, and Spring Road is a narrow street, and assuming that the grades they have given here are correct that would be the most desirable part of the ground, and you are away from those shanties on Spring Street, which don't help the value of the property.

Q. Is the part of it that is nearest to 16th Street of more value than that on the eastern end? A. I don't think there is much difference between 14th and 16th Streets as to values. I think they are about the same.

Q. Now this plat in respect to which you have been testifying contains no figures? A. No, sir.

245 Q. Doesn't give the area? Do you regard those lots all of equal value—those small lots? A. I haven't studied that carefully. I wouldn't like to answer without studying it carefully and having the figures—the dimensions of the lots.

Q. You don't know the depth and you don't know the width? A. Just approximately; I could only guess at it.

Q. You don't know the depth nor the width? A. No, sir.

Q. And you don't know the area of this large lot on the east nor of this large lot on the west? A. No, sir.

Q. And you don't know the depth of these lots? A. Except what I testified to before, which was approximately, as near as I could guess at it.

Q. Assuming that one person owns 4/24ths, two persons own 2/24ths each, five persons own 1/24th each and seven persons own 3/24ths collectively will you tell me how you would divide that property? A. That could be divided equitably.

Q. You mean physically? A. Any way; either way.

Q. Without loss or injury to them? A. I think so; yes.

Q. State how it can be done, if you please. A. I think any tract of ground can be divided to fit any number of persons.

246 Q. You mean physically divided or profitably divided? A. Profitably, equitably and physically.

Q. That is so in respect to all classes of property? A. There might be some exceptions. I think it could be done. Five persons might own one lot, 25 feet front, profitably, equitably, physically and every other way.

Q. Twenty-five feet front? A. Yes, sir.

Q. Would that be capable of division in kind between them without loss or injury to them? A. Five persons—100 persons can own one lot.

Q. I know they can legally own it, but the question is can they physically divide it so as to get the best results out of it? A. You couldn't cut 25 feet up into 100 parts to advantage, but there are not that many people here.

Q. That is what I am saying. A. But there are not that many people here. There is sufficient ground here to give each person a desirable and respectable building lot.

Q. Assuming that the ownership is just as I have stated? A. Yes, sir.

Q. You haven't worked out the problem yourself? A. I could work it out if I had enough time.

Q. Are you a surveyor? A. No, sir.

247 Redirect examination.

By Mr. FORREST:

Q. You spoke about another tract. Look at the plat attached to the original bill of complaint in this cause and tell me whether that was the other plat that you referred to as having figures on it. A. (After examining plat referred to.) Yes, sir, that is the plat.

Q. On that plat is there or not, to the north of it, lines at a certain distance apart indicating a proposed road? A. Yes, sir.

Mr. LEIGHTON: Question objected to as leading.

Q. Are there or not figures showing on one side the depth of the lot? A. I assume this is it (referring to plat)—155 feet.

Q. And are there or not upon the face of that plat figures showing the width and depth of the lots fronting on the Spring Road? A.

Yes, sir; some of them are marked and some are not. The map has a scale on it.

Q. And that scale, could it or not, be used to compute the area of that property?

Mr. LEIGHTON: Question objected to. The plat itself is the best evidence.

A. That could be done. Yes, sir.

FULTON R. GORDON.

Subscribed and sworn to before me this 4th day of Oct. 1905.

MARGARET M. MURRAY,
Examiner in Chancery.

248 Mr. FORREST: Solicitors for defendant Starkweather offer in evidence the bill, answer and decree in equity cause No. 20,360, and the opinion of the court. They also offer in evidence a copy, certified by the Examiner, of the letter dated Washington, D. C., February 18, 1899, which appears as an exhibit in one of these equity causes, and counsel think in 20,360. Solicitors for defendant Starkweather also offer in evidence the subscription agreement to shares or interest in the Crescent Heights syndicate, which has been filed as an exhibit in 20,205, and ask that a certified copy thereof be made by the Examiner and filed as an exhibit in this cause, the original to be produced at the hearing, if necessary. Solicitors also offer in evidence the Power of Attorney filed as an exhibit in equity cause No. 20,205, authorizing the complainant Jenner to purchase the seven-acre tract, and a certified copy is asked to be made by the Examiner and annexed as an exhibit in this cause, the original of which will be produced, if required, at the hearing.

Cross-examination of GEORGE B. STARKWEATHER.

By Mr. LEIGHTON:

Q. Is the plat marked "G. B. S. No. 2," which has been offered in evidence, your own work? A. It is.

Q. Do you know the actual*ly* depth of any of these lots that are outlined on the plat?

249 Mr. FORREST: Objected to as not proper re-cross examination, counsel having asked the witness in reference to this plat on cross-examination and nothing new -as developed in relation thereto on re-direct.

A. This is a tracing of a plat which I have been familiar with for eighteen years. I am familiar with the courses and distances in a general way.

Q. You have stated that two of the parties own substantially the same interest. What parties are those?

Mr. FORREST: Same objection to this examination.

A. Mr. Jenner and Mr. Starkweather.

Q. You claim to own seven shares?

Mr. FORREST: Same objection.

A. Seven shares; I have all along.

Q. Those shares that are claimed by the Campbell heirs? A. Those are the ones.

Mr. FORREST: Same objection to all this line of examination, and we ask that a motion be made to strike out the same as not being proper re-cross examination.

Q. You don't know the areas of any of these lots that you have marked on the plat—don't know how many square feet they contain? A. Yes, sir.

Q. What is the area of the one lying to the east—how many square feet? A. Upwards of 25,000.

Q. Are you guessing at that or have you computed it? A. I have computed it.

250 Q. Why didn't you put it down on the plat itself? A. Merely because I hadn't time to draw this to scale, that is all.

Q. What is the size of the lot next to 16th Street? A. According to the plat, of which this is a tracing, there are a matter of 100,000 square feet here.

Q. Altogether? A. Altogether. I took approximately one-third of that 8/24ths for one piece and 7/24ths for another, making 15/24ths.

Q. You regard those of equal value? A. The difference is not great. In fact, I should hesitate whether to take the east or the west end of this steamboat lot, if the choice were offered me. There are advantages and disadvantages.

Q. What is the extent of that one next to 16th Street? What is its frontage on the Spring Road? A. There are a matter of about 75 feet.

Q. What is its depth? A. 195 feet according to the plat.

Q. You believe the most advantageous way to dispose of that property is to divide it in kind, or to sell it in bulk and divide the proceeds? A. I repeat that my opinion is that it should be held intact as it is. If it must be disposed of it should be disposed of in kind, divided to let those who wish to slaughter it, to sacrifice it now, do so, and those who wish to retain their interest to

251 retain it.

Q. Supposing that it could be held, how long would it have to be held, in your judgment, before sale could be made of it advantageously? A. Well, it might be one year; it might be two years. It is always uncertain to prophesy.

Q. When the proper time arrives you think the best way to dispose of it would be in bulk? A. I didn't say that. It would depend upon the conditions then. All these things depend upon the conditions at the time.

Q. What would be the object of keeping it together unless it should be sold in bulk eventually? A. I have purchased over 600 acres of real estate. I never began with the idea of purchasing so much. I have always found it necessary to control quite a tract to do anything with what one does own. For example, here should be one

controlling purpose, and if each one has his own individual idea to carry out no concerted action can be depended upon. In regard to this very tract, I have known of two fine opportunities to dispose of it as a whole and which may illustrate the advantage of keeping it intact.

Q. Then I understand you to say, as a general proposition, that you think it more desirable to hold ground of this kind and sell it as a whole rather than in small pieces?

Mr. FORREST: I object to that, as I did not understand the witness to so state.

252 A. It is wise, in my opinion, to keep it intact to be ready for any kind of a situation. If some large plant is looking for a piece of property they can get it where it is in one ownership, where it would be impracticable or impossible to get it in numerous ownerships. If this is held in one ownership and the proper time comes to sell it it may be expedient to subdivide it into 40 lots or 100 lots and dispose of it in that way.

Q. Assuming that three of these shares are owned by the Campbell heirs, how would you segregate their interests so that they should each hold separately their share? A. Since three shares are not owned by the Campbell heirs I do not see how it is competent in a matter of cross-examination for me to answer a hypothetical question of that sort.

Q. Assuming that it was so, do you think it could be done—that it is practicable, assuming that there are three of those shares that belong to the Campbell heirs, so that each of them shall hold their interest in kind, without loss and injury?

Mr. FORREST: Question is objected to as incompetent, counsel not stating to the witness how many Capmbell heirs there are and into how many parts those three shares are to be divided.

Q. Assuming that there are eight of them. A. The Campbell heirs are holders of a great deal of real estate and they hold it in common, and I do not see why this should be an exception to that.

253 Q. Then the only way that you think it is practicable to segregate their interest would be to set off a 3/24ths to them in bulk? A. That would be the way. It could not be done otherwise. They have no right to-day to segregate anything. They have no rights there during the life of their mother—of the widow.

Q. Why do you say that? A. Because I chance to know.

Q. How do you know? What are their rights? A. I have read the will.

Q. That is your interpretation of her interest under the will? A. Yes, sir.

Q. Then in laying off these two big lots at the end of the tract you did so upon the basis of your owning seven shares? A. Yes, sir.

Q. That is the four that are in the hands of Yerkes & Baker and

the three that are claimed by the Campbells? A. That are held in trust by the Campbells.

Q. And your theory of the practicability of a sub-division is based upon the fact of that ownership? A. There is no question about the ownership.

Q. Is that true? Supposing you only have an interest in four shares instead of seven, do you think it would be then? A. It would not modify my policy in the least.

254 Q. You think it would be equally susceptible of division in kind without loss or injury, as now? A. I do.

Redirect examination.

By Mr. FORREST:

Q. A considerable number of questions have been asked you, Mr. Starkweather, as to whether or not this property was susceptible of partition in kind, without injury, among the 24/30ths represented in this cause. Is there any trouble in dividing this tract into 24 separate parcels and making each one equal to the other 24 and dividing them among the parties in interest according to the interest that they hold? A. There is not.

Q. Each having according to his interest an equal share? A. An equitable share.

Recross-examination.

By Mr. LEIGHTON:

Q. Equal in value or equal in area, do you mean? A. Either.

Q. Do you assume all parts of this ground to be of equal value? A. Not absolutely, but no great injustice would be done as I have divided this with frontage on the north and south—double frontage—there can be no great hardship wrought.

255 Q. Do you regard all of these strips of equal value providing they are of the same size? A. According to those central strips, they are substantially the same. That is, the square feet. Every square foot there is of substantially equal value and these central ones surely. As for the respective values of the east and west end, it is naturally more valuable to the west on 16th Street, but there is this disadvantage, that as it is today more of a fill would be required there.

Q. How much? A. Well, probably 20 feet more—15 feet more, surely.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 4th day of Oct. 1905.

MARGARET M. MURRAY,
Examiner in Chancery.

Adjourned subject to notice.

256 DEFENDANTS' EXHIBIT G. B. S. No. 1.

Washington Post, Sunday, February 26, 1905.

Mount Pleasant Heights.

The New Addition Just West of 14th St. Extended.

Bids Open for Grading 14th St. Extended.

This week the District Commissioners opened bids for grading Fourteenth Street from its present terminus one mile further north.

Capital Traction Car Line Also to be Extended.

The Capital Traction Railroad Company has just purchased 16 acres of land ¾ of a mile north of the present Fourteenth street car barn for their new car barn, and are making all necessary arrangements to extend their line out Fourteenth street extended as soon as the Government completes the grading.

$1,000,000 Appropriated for 16th St. Extended.

Congress has already appropriated $1,000,000, which has been used in acquiring the right of way for Sixteenth Street north to the District line.

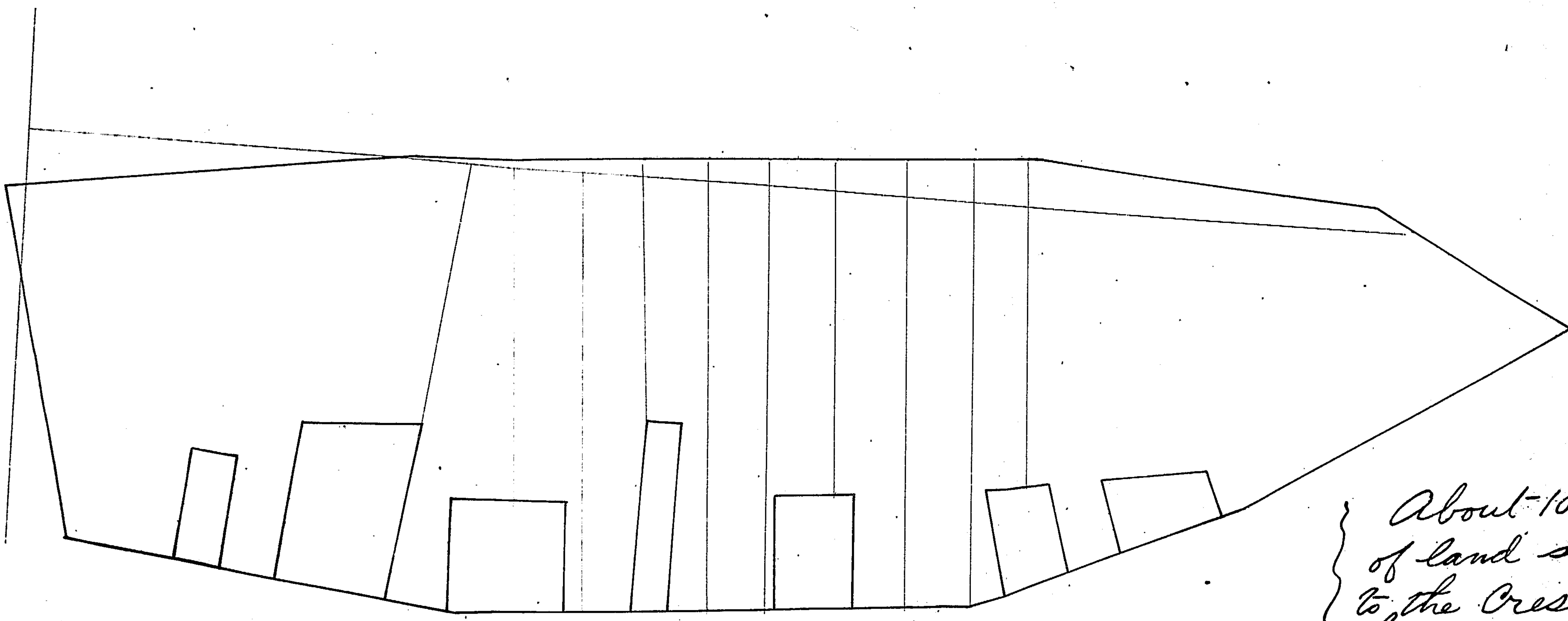
Effect on Values.

What effect will the extension of Fourteenth and Sixteenth streets and the Fourteenth street car line have on real estate values in our locality? Remember what we have always said: "You must buy BEFORE (not after)" the extension of these important thoroughfares if you wish to receive the great increased values that are sure to follow.

257 The Public is the Jury.

Ask any progressive Washingtonian who is familiar with the wonderful growth of the city in the line of Fourteenth and Sixteenth streets, northwest, whether or not property in this section at Mount Pleasant Heights is both a safe and profitable investment. The public is the jury: ask its verdict. Could any reference be fairer? Did you invest in "old Mount Pleasant" and Columbia Heights when lots sold there at our present low prices?

Delay now and you will miss even a better opportunity, as the Government Building Inspector's report shows the city is growing fully 300 per cent. faster now in this locality than 10 years ago. This means will you receive city prices for Mount Pleasant Heights lots three times as quickly as those who purchased in "Old Mount Pleasant" when that was first placed on the market.



Defendants Exhibit G. B. S. No. 2.
(signed) Margaret M. Murray
Examiner

No. 1730.
G. B. Starkweather
vs.
J. T. Dyer } p. 259.

A double lot or about 4,000 sq ft for each holder of the 24 outstanding Certificates

About 100.000 sq. ft. of land still left to the Crescent Heights Syndicate and unencumbered save by the Equity Suits instituted by G. B. Starkweather during the past ten years.

Location, Prices, Terms, &c.

Mount Pleasant Heights is located between Fourteenth and Eighteenth streets, and only two squares north of "old Mount Pleasant" directly in line of the city's greatest growth.

We are now subdividing the property into ½, 1, 2 and 3 acre villa plots; also 125 building lots. This property is a part of "Argyle," or better known as Blagden's "Deer Park," famous for its natural forest shade trees, which, of course, will be preserved.

Prices 20c. to 40c. per square foot. Terms $100 to $500 cash, balance $20 to $50 monthly, or one-fourth cash, balance in five annual payments; 5% off for cash. Money loaned to build.

Write, telephone, or call for new illustrated booklet, plat, &c.

Automobile at your service if you wish to see the property.

ROBT. E. HEATER, *M'g'r.*,
Colorado Building,
Telephone Main 529.

FULTON R. GORDON,
Northwest Subdivisions a Specialty.

(Here follows diagram marked p. 259.)

EXAMINER'S EXHIBIT J. E. M., No. 7.

Jno. E. McNally, Examiner.

Eq. No. 20360.

STARKWEATHER
vs.
WARNER ET AL.

"EXHIBIT A."

Power of Attorney.

WASHINGTON, D. C., *Dec.* 14, 1897.

We, the undersigned, hereby appoint Herbert W. T. Jenner, Trustee, of Washington, D. C., our Attorney-in-Fact to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on December 16, 1897, under a deed of Trust recorded in Liber 1365 folio 248 *et seq.* or any other postponement of said resale or subsequent resale, to bid in the property for as small

a sum as possible, the outside limit to be Twenty-four thousan Dollars ($24000).

And we hereby agree to pay Mr. Jenner our proportionate share of the total cost and Tax Deeds on said property already obtaine by him, and we agree to pay our proportionate shares of the depos money on the day of sale and the balance of the purchase mone within the period and on the terms set forth in the advertisemen under which the sale is made, our said proportionate interests o shares to be as stated below under our respective signatures.

(Signed) R. G. CAMPBELL, one-fourth interest.
ELLIS SPEAR, one-tenth "
E. S. PARKER, one-eighth "
HERBERT W. T. JENNER, remainder of interest.

261 True copy.
Test:
(Signed) JNO. E. McNALLY,
Examiner in Chancery.

I hereby certify that this is a true and correct copy of Exhib called for by counsel on page 57 in Equity Cause No. 23,436.

MARGARET M. MURRAY,
Examiner in Chancery.

262 EXHIBIT J. E. M. No. 1.

(Copy.)

Eq. No. 20360.

(Copy.)

STARKWEATHER
vs.
WARNER ET AL.

JOHN E. McNALLY,
Examiner.

Crescent Heights Syndicate.

The present status of this syndicate is as follows: The asse consist of about three acres of land on Spring Road. The liabiliti are: Spear note about $630; Jenner notes about $770; Warner no about $600. Arrears of Taxes with penalties about $200.

All these notes are secured by a deed of Trust which is no overdue and the land can be sold out at any time at the reque of any note holder.

The trustee Croissant has also a claim for money paid on beha of the Syndicate but the Attorney for the Syndicate reports th

here is a shortage in the accounts of the trustees Croissant and Johnson of about the same amount so this claim need not be considered at present, as one about offsets the other.

The Stockholders to whom this circular letter is sent are respectfully asked to answer the following questions in writing and to address their replies to Ellis Spear, Equitable Building, Washington, D. C.

1. Are you willing to have the property sold out under the Deed of Trust so that you lose all further interest in the matter?

263 2. Are you willing to pay an assessment of $30. a share to settle the arrears of taxes, the interest on the notes and curtail on the Warner note?

3. Are you satisfied with the present trustees, Croissant and Johnson, or if not, are you desirous that the undersigned be made substitute Trustees for the purpose of making and enforcing assessments, and managing the property in the future?

The undersigned are stock holders and are willing to extend their notes without curtail in cash if the interest on them be paid and think they can get the Warner note extended if curtailed one third and the interest paid.

The undersigned also think that the three acres of land is worth the encumbrances on it, that it will be worth much more in the course of some years and that it can be carried by small semi-annual assessments sufficient to cover the taxes, interest on notes and to take up the Warner note in three annual payments.

This assessment will release the property for six months, at the expiration of which time further assessments will be necessary only to pay the semi-annual interest, unless further payments be required on the Warner note, in any event only for small sums.

The undersigned now believe that the property is worth more than the encumbrances and will increase in marketable value henceforth.

(Signed) ELLIS SPEAR.
HERBERT W. T. JENNER.

Washington, D. C., Feb. 18, 1899.

264 I hereby certify that this is a true and correct copy of Exhibit called for by counsel on page 57 in Equity Cause No. 3,436.

MARGARET M. MURRAY,
Examiner in Chancery.

Spear and Jenner.

Circular Letter.

Feb. 18, 1899

Reply of Yerkes and Baker.

(Copy.)

(Written on the Back.)

(Copy.)

Answer Feb. 24, 1899.

Ellis Spear, H. W. T. Jenner, Wash., D. C.

GENTLEMEN: Your communication of the 18th inst. at hand. W cannot for reasons not unknown to you answer your several que tions.

By reason of our claim upon the property in question we can on insist that no action be taken which shall impair the value of t certificates of the Crescent Heights Syndicate.

Permit us to suggest that you communicate direct with the own of the Equity of redemption.

Respectfully,

(Signed) YERKES AND BAKER.

265 DEFENDANT'S EXHIBIT J. O. J. No. 3.

(Copy.)

We, the undersigned, for ourselves, our heirs, executors or admi istrators, mutually agree as follows:

We hereby agree to take the number of shares set opposite o respective names in the tract of land known as "Crescent Height and located at the junction of Fourteenth and Spring Streets, Mou Pleasant, D. C. and containing ten acres more or less. (At the ra of $7500.00).

The terms of payment to be one-half cash when the subscripti is made, balance upon call of the Trustees, when found necessa to meet the payment of the trusts on the property as they may f due, to the extent of not more than $17,000. these calls to be ma pro rata on all shares except those subscribed for by the own George B. Starkweather, which shares shall be considered as fu paid. The balance either in cash or by a note secured on the pr erty, payable when the property is sold by the Trustees with inter at 5% per annum, payable annually.

The property to be delivered to us or our Trustees free and un cumbered except as to the above and in case a perfect title to the pr

erty cannot be so passed (including the small holdings on Spring St.) then the money paid by us is to be returned to us and we are to be released from further obligations. And we hereby name as our Trustees with full powers J. D. Croissant and J. O. Johnson and request and authorize them to act as our Trustees in holding, managing and selling the property, and they are authorized to deduct from the amount received by them for sales a commission of 5% for
266 their compensation and to divide the profits between us, the undersigned in proportion to the amounts paid in by us.

Each share to represent a subscription of $2500, upon which the case payment will be $1250.

267 Filed Oct. 7, 1905.

Name.	No. shares.	
(Signed) J. D. Croissant	Two	$2500.
(Signed) John O. Johnson	Two	$2500.
(Signed) E. S. Parker	One	$1250.
(Signed) C. A. Baker	One	$1250.
(Signed) W. E. Barker	One	$1250.
(Signed) Victor Mindeleff	One	$1250.
(Signed) Ellis Speare	1	$1250.
(Signed) Geo. H. Johnston	One	$1250.
(Signed) Stanley Johnson	Two pd.	$2500.
	Declined, returned deposit of	
(Signed) Chas. S. Baker	One	$100.
(Signed) Albert C. Peale	One	$1250.
(Signed) Henrietta Stuart	One	$1250.

Geo. B. Starkweather Thirteen Shares (13)
John I. Dyer (By J. O. J.) One share
Herbert W. T. Jenner. Two (2) Shares.

I hereby certify that this is a true and correct copy of Exhibit called for by counsel on page 57 in Equity Cause No. 23436.

MARGARET M. MURRAY,
Examiner in Chancery.

268 *Suggestion of Death of Jno. D. Croissant.*

Filed April 17, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

Comes now the complainants in the above-entitled cause, by B. F. Leighton, Esq., their solicitor, and suggest to the court the death of

John D. Croissant; and move that Sarah J. Croissant, his widow and devisee, and DeWitt C. Croissant, his sole-heir-at-law and devisee, be made parties defendant, in their own right, and also as executors of the last will and testament of the said John D. Croissant, deceased.

B. F. LEIGHTON,
Solicitor for Complainants.

Answer of Sarah J. Croissant et al.

Filed May 2, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

Joint and Several Answer of Sarah J. Croissant, widow, devi-
269 see, and executrix, and De Witt C. Croissant, sole heir at law, devisee, and executor, respectively, of John D. Croissant, deceased.

These respondents, for answer to the second amended bill of complaint filed herein, adopt in all respects the answer of John D. Croissant filed jointly with his co-defendant John O. Johnson on October 18th, 1904.

R. GOLDEN DONALDSON,
Solicitor for Respondents,
Sarah J. Croissant and DeWitt C. Croissant.

Oath waived:
B. F. LEIGHTON,
Solicitor for Complainant.

Decree for Sale, &c.

Filed May 4, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

This cause came on to be heard at this term of the Court upon the pleadings and testimony, and was argued by counsel for
270 the respective parties and considered by the court, and it appearing to the court that the property mentioned and de-

scribed in the bill of complaint, to wit: Lots numbered one (1) to forty-four (44), inclusive, in J. C. Lewis' subdivision of Pleasant Plains, situate on the North side of Spring Street, at the point of Union with Fourtenth Street, extended, excepting nevertheless parts already deeded in fee to others, more correctly described as follows, to-wit: Beginning at a point at the northwest corner of said lot one (1) in Pleasant Plains; thence South 66¼° east to North line of Spring Street; thence with said North line of Spring Street as laid down on plat recorded in the Surveyor's Office of the District of Columbia, in County Book 6, page 113, to the east line of land conveyed to Hall by deed recorded among the land records in Liber 618, folio 368; thence with said Hall's east line, north 19° west 155 feet; thence North 80¼° east 181.50 feet; thence North 84° East 227.75 feet; thence South 89° east 255 feet; thence south 66¼° east 36.50 feet to the place of beginning, excepting nevertheless, such parts of said tract as has already been conveyed by the said Starkweather, cannot be divided without loss or injury to the parties interested therein, it is this 4″ day of May, 1906, adjudged, ordered and decreed as follows:

1. That said property be sold, and that Benjamin F. Leighton and R. Golden Donaldson be, and they are hereby, appointed trustees to make said sale, giving bond in the sum of Eight thousand dollars ($8000), and that the advertisement of said sale be made in the Evening Star Newspaper.

Said trustees are hereby authorized and empowered, in their discretion, to cause a survey and subdivision to be made of said
271 real estate before offering the same for sale.

It is further ordered that the provisions of Equity Rule No. 91 be in all respects complied with.

2. That upon the sale of said property, and the bringing in of the proceeds thereof by said trustees, this cause shall be referred to the Auditor of the Court to state the account of said trustees and the distribution of said proceeds of sale, and in making up said account the Auditor shall first provide for the payment by said trustees of the expenses of this suit and all valid debts due by the Crescent Heights Syndicate, the balance remaining to be distributed among the parties to this cause according to their respective rights and interests.

3. The Auditor shall also, as part of said reference, state the account of John O. Johnson, surviving trustee of the Crescent Heights Syndicate, and the defendants, Sarah J. Croissant, widow, executrix, and devisee and DeWitt C. Croissant, sole heir at law, executor, and devisee, respectively, of John D. Croissant, the deceased trustee of said syndicate, which account shall show all moneys received by the said John O. Johnson and John D. Croissant, trustees of said Crescent Heights Syndicate, and how the same *was* disbursed.

And the Auditor shall state any other accounts between the parties to this cause relating to the affairs of said syndicate that may be necessary and proper in order to finally settle, dispose of, and wind up the affairs of said syndicate.

HARRY M. CLABAUGH,
Chief Justice.

272 That the defendant, George B. Starkweather, prays for a severance from the other defendants in this cause, and the said Starkweather prays an appeal to the Court of Appeals of the District of Columbia from the foregoing decree, which prayers are hereby granted, and the amount of the appeal bond for costs is fixed at One hundred dollars ($100.00).

HARRY M. CLABAUGH,
Chief Justice.

Memorandum.

May 29, 1906.—Appeal Bond filed.

273 *Order Extending Time to File Record.*

Filed July 17, 1906.

In the Supreme Court of the District of Columbia.

No. 23436. In Equity.

JOHN T. DYER ET AL., Complainants,
vs.
JOHN D. CROISSANT ET AL., Defendants.

Upon application of the defendant George B. Starkweather, through his solicitor, and good and sufficient cause appearing, it is, by the Court, this 17″ day of July, 1906 ordered, that the time for filing the transcript of record, herein, with the Clerk of the Court of Appeals, be and the same is hereby extended to and including the 17″ day of August, 1906.

ASHLEY M. GOULD, *Justice.*

Order Further Extending Time to File Record.

Filed August 14, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

Upon application of defendant George B. Starkweather, through his solicitor of record, and upon good and sufficient cause shown to the court, it is this 14th day of August, 1906, ordered, that the time

for filing the transcript of record herein with the Clerk of the
274 Court of Appeals, be, and the same is hereby further extended to the first day of October, 1906, inclusive.

JOB BARNARD, *Justice.*

275 *Bill of Injunction.*

Filed April 18, 1899.

In the Supreme Court of the District of Columbia.

Equity. No. 20360.

GEORGE B. STARKWEATHER
vs.
BRAINARD H. WARNER, S. HERBERT GIESY, JOHN O. JOHNSON, JOHN D. CROISSANT, ELLIS SPEAR, HERBERT T. JENNER, and HENRY J. GROSS.

To the Honorable the Chief Justice and Associate Justices of the supreme court of the District of Columbia:

The complainant George B. Starkweather respectfully represents:

1. That he is a citizen of the United States, resident of the District of Columbia, and files this Bill in his own right with respect to the matters hereinafter set forth and contained.

2. That all the defendants are citizens of the United States and residents of the District of Columbia; that the defendants Giesy and Warner are sued as trustees under a certain deed of trust hereinafter referred to and set forth; that the defendants Johnson and Croissant are sued as trustees and grantors in a certain deed of trust hereinafter referred to and set forth; that the defendants Jenner, Spear and Gross are sued as alleged beneficiaries and holders of the notes under the certain deed of trust hereinafter set forth.

276 3. That sometime prior to May 1892 the complainant was the owner of certain parts of property in the District of Columbia known on the plats of the said District as part of Pleasant Plains and Padsworth, and being so possessed of said property the complainant and his wife Emma conveyed the same to the defendants Johnson and Croissant, as trustees, representing a certain syndicate, and the title to said property was taken by the said last named defendants for and on behalf of the said Syndicate, and the shares in the same were divided into thirty parts, each owner of a share paying therefor, or contributing the sum of $2500, and upon the receipt of such sum, the said defendants Croissant and Johnson issued to the party becoming said certificate holder a certain Syndicate certificate setting forth that the party in whose favor the certificate was issued had contributed the said sum of $2500 for the purchase of the real estate aforesaid, and was entitled to a one-thirtieth undivided interest therein, and declaring that the said trustees aforesaid held said real estate upon certain trusts, and the complainant annexes

hereto as part hereof a true copy of the certificate so issued and th same is marked as Complainant's Exhibit "A."

The complainant further says that the said Exhibit "A" containe the full trust upon which said property was held by the said defend ants trustees and that outside of the agreement and understandin appearing upon the face of said certificate, there were no other term or conditions upon which said real estate was held by the said tru

tees or any power or authority to act concerning the same.

277 4. That the complainant is at present the owner in h own right of seven of the thirty shares into which interes in the said property was divided and certificates issued by the sai defendants Johnson and Croissant as aforesaid, and which were take by the Complainant as part purchase money of said property.

5. That prior to the ownership by the complainant of the pro erty hereinbefore referred to, the complainant's immediate grant one Lewis made a subdivision of the said property into lots 1 to 4 both inclusive, and by such description conveyed the same to th complainant, and by such subdivision said property has ever sin been known and certain lots as therein described conveyed as i said subdivision set forth, and the complainant annexes hereto part hereof and marked Exhibit B a true copy of so much of said su division so made by the said Lewis as shows lots 1 to 24 both incl sive, the original of which is of record in the office of the Survey of the District of Columbia in County Book 6 at folio 113.

6. That the property sold by this complainant to the said defen ants Johnson and Croissant, trustees as aforesaid, covered about te acres of ground, seven acres of which were in the rear of the sa Lewis Subdivision, and to secure the deferred purchase money, an other expenditures, there was a deed of trust given upon the said seve

acres, as he is informed and believes, and therefor- so avers th

278 fact to be; but the said subdivision lots 1 to 44 both inclusiv were left free and unincumbered and, as this complainant informed and believes, and therefore avers the fact to be, no one o behalf of said certificate holders was authorized and empowered to in cumber in any way the said subdivision lots aforesaid, and there wa no such authority given, as he is informed and believes, and therefor avers the fact to be, to the said trustees Johnson and Croissant, ye notwithstanding the premises aforesaid the said defendants Johnso and Croissant by a certain deed or instrument by them executed an dated the 28th day of January, 1898 and recorded among the Lan Records of the District of Columbia in Liber 2279 at folio 259 *seq.*, claimed and pretended to convey to the defendants Giesy an Warner certain property belonging to the said Syndicate to secur the defendant Jenner in the sum of $715.35 evidenced by the prom issory note of the defendants Johnson and Croissant; to secure th defendant Spear in the sum of $2378.79 evidenced by a like prom issory note and to secure the defendant Henry J. Gross in the sum o $554.12 evidenced by a like promissory note, and all of said note being payable one year after date; but whether the said sums repre sented by the said promissory notes were *bona fide* indebtedness o the property owned by said Syndicate this complainant is not in

ormed, and asks for discovery by the said defendants of the nature f the transaction whereby any such indebtedness was ever incurred or and on account of the said property and by what authority, if ny, the said defendants, trustees as aforesaid, claimed to incur any uch indebtedness, if the same was truly incurred, as well as for what right or authority they claimed to execute the alleged deed of
79 trust as security for the said alleged indebtedness.

7. This complainant further says that the said defendants Giesy and Warner as trustees had advertised in a newspaper published in this City and District the property named and described nder the alleged deed of trust aforesaid, as is claimed therein, at he "request of the holders of the notes secured thereby," the defendnts Jenner, Spear and Gross as this complainant is informed and elieves and so avers, and said sale is advertised to take place at five 'clock P. M., on Tuesday April 18th, 1899.

This complainant further says that the said property so advertised s so vaguely, uncertain and indefinitely described as to be impossible o locate upon the plats, maps or records; and no one could purchase he same at such sale, as this complainant is informed and believes, ith any correct knowledge of the property he was buying; and it is pparent, in any event, from a perusal of said advertisement that an nspection and comparison of certain conveyances referred to therein ould have to be made in order to get at the property referred to in uch conveyances; that no part of the property so alleged to have een conveyanced is described in said advertisement, but only a eference to certain conveyances to certain grantees by liber and olio without giving the names of the grantors, the dates of such nveyances or any reference to the property whatever said to have een conveyed:

The complainant further says that the said advertisement
80 refers to certain parts of lots 6 B, 7 B and 8 B without referring to any record or plat indicating the particular parts of he lots referred to.

8. The complainant further says that in no part of said advertisement aforesaid, a copy of which is hereto annexed as part hereof and arked Complainant's Exhibit "C," does it appear how many feet acres are embraced in the property alleged to be described in the id Exhibit, and although this complainant is interested in the roperty owned by the said Syndicate aforesaid to the extent named nd knows the location and boundaries thereof it would be impossible r him to say how much ground was embraced in the said advertisement or the property thereon referred to as to its metes and bounds; nd while this complainant has reason to believe that the property tended to be described is in part the lots shown as Nos. 1 to 24 th inclusive on the said plat hereto annexed and the other twenty ts from 25 to 44 both inclusive a part of said subdivision, yet he nnot tell with any certainty or accuracy for the reasons hereinfore set forth as to the faulty description of said property, and he rther says that if it be true that said property embraces the lots st herein mentioned then a proper and true description thereof ould have been put in said advertisement by lots as on said de-

scribed plat, described so that the said property could be easily ident
fied and no one be mislead who intended to purchase the same, o
those interested being notified by such advertisement that propert
in which they had an interest was to be sold and the only way tha
he could identify it is by the fact that on an inspection of th
alleged deed of trust the defendant Jenner appears as th
281 holder of one of the notes secured, and he is the same Jenne
with whom this complainant heretofore had litigation in th
Supreme Court of the District in case known as Equity No. 16,61
and there is also a suit now pending between complainant and d
fendant Jenner with respect to a certain portion of the propert
owned by the said Syndicate, said latter case being known as Equit
No. 20,205. To which said causes this complainant begs leave
refer at the hearing hereof, if deemed by him necessary.

The complainant further says that his main reason for believin
and asserting that the property so described is as subdivided in
lots 1 to 44 inclusive, property of the Syndicate in that the nam
mentioned in said advertisement as having been conveyed certai
persons of said property are those persons who purchased lots of sa
subdivision on Fourteenth Street and Spring street.

9. The complainant further says that the said defendants Jenn
and Spear are also owners of interests in the said Syndicate, t
defendant Jenner being the person most largely interested, a
this complainant charges, on information and belief, that it was t
object and purpose of the said defendant Jenner to so have sa
property advertised in the faulty manner in which it is so describ
with the intent and purpose to mislead those who might be interest
therein and for the avowed purpose of purchasing the same at a
such sale and for an amount wholly disproportioned to its true a
actual value.

The complainant further says that his business has bc
282 such within the past few months as to require the grea
part of his time and attention outside of the District
Columbia and during a portion of the past few months he h
been indisposed and unable to attend to business, and it was on
during the past few days that his attention was called to the sa
advertisement; that although he was, as hereinbefore stated large
interested in the property held by the said defendants Johnson a
Croissant as trustees for said Syndicate he was not notified or call
upon to meet any assessments or dues on account of the alleg
indebtedness set forth in said deed of trust, nor was any demand
any way made upon him as required by the agreement under whi
the parties interested in said property acted.

The complainant further says and charges that the said defendan
Jenner and Spear have conspired, colluded and confederated togeth
for the purpose of having a sale made of said property, witho
a proper description thereof as subdivided, and the said defendan
owning and controlling a majority of the stock and interest
said property prevented by such conspiracy, collusion and co
federation with the said trustees Johnson and Croissant from havi
assessments made, as required under the agreement aforesaid, up

he different shares and certificate holders for collection of any debts of said Syndicate or association, and especially the alleged debts represented by said promissory notes.

10. The complainant further says that to permit a sale of said property described in said advertisement as threatened would
283 work an injury and hardship upon him and would seriously sacrifice his interests therein, and the effect of such sale would practically be to destroy the interests of those owing said shares or interests in such syndicate and place the entire interest in the possession, ownership and control of the said defendant Jenner. That the value of the interest of the Complainant in said syndicate property is $20000. which would be seriously impaired if not destroyed by such sales.

The premises considered he therefor prays:

1. That process may issue in due form directed to the defendants commanding them to appear at a day named to answer the exigency of this Bill of Complaint.

2. That the defendants Warner and Giesy and their agents and auctioneers may be restrained, until the further order of the court from selling or attempting to sell the property referred to and set forth in the said advertisement.

3. That upon a hearing the court will perpetually enjoin and restrain the said defendants Warner and Giesy from selling or attempting to sell said property set forth in the said advertisement by virtue of the said deed of trust.

4. In the event that said Court should on final hearing be of opinion that said property should be sold under said court, then that a decree may be made requiring said Trustees to sell the same according to the (rest not legible).

5. That the complainant may have such other and further relief in the premises as the nature of the case may require.

284 The defendants to this Bill of Complaint are Brainard H. Warner, S. Herbert Giesy, John O. Johnson, John D. Croisant, Ellis Spear, Herbert T. Jenner and Henry J. Gross.

GEO. B. STARKWEATHER.

R. P. EVANS,
E. FORREST,
For Compl't.

George B. Starkweather being first duly sworn according to law deposes and says: that he is the complainant in the above entitled cause and has read over the above Bill by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief he believes to be true.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this April 17th, 1899.

JOHN H. O'DONNELL,
Justice of the Peace, D. C.

[SEAL.]

285 *Answer of Brainard H. Warner et al.*

Filed April 26, 1899.

In the Supreme Court of the District of Columbia.

In Equity. No. 20360.

GEORGE B. STARKWEATHER
vs.
BRAINARD H. WARNER ET AL.

The defendants Brainard H. Warner, S. Herbert Giesy, John O. Johnson, John D. Croissant, Ellis Spear, Herbert T. Jenner and Henry J. Gross the defendants in the Bill of Complaint filed by George B. Starkweather, responding to the rule to show cause, issued by this Honorable Court on the 18th day of April, 1899, jointly and severally answering say:

1. They admit the matters and facts set forth in paragraph one of the Bill of Complaint in this Cause filed.

2. They admit the matters and facts set forth in paragraph two of the Bill of Complaint in this Cause filed.

3. The facts set forth in paragraph three are substantially correct except that neither the deed of George B. Starkweather and his wife Emma conveying lots 1 to 44 of the Lewis subdivision nor the copy of the Syndicate Certificate marked "Complainants' Exhibit A" contain- the full trust upon which said property was held' by John O. Johnson and John D. Croissant, Trustees. The formation of the Syndicate and the trusts upon which the property was held has been the subject of investigation by this Court in Equity Cause 16612, which the Respondents refer to and pray to have taken and read as part hereof. The property comprising Lots 1 to 44 of the Lewis subdivision which has been advertised

286 for sale by the defendants S. Herbert Giesy and Brainard H. Warner excepting certain portions which never were the property of the said Syndicate, was not only conveyed by George B. Starkweather and his wife to said Johnson and Croissant but was also purchased by them at trustees' sale and conveyed to them by Ashford and Stickney, trustees, by deed recorded in Liber 1714 folio 137 *et seq.* one of the Land Records of the District of Columbia, a certified copy of which is an exhibit in Equity cause 16612 which the Respondents refer to and pray to be taken and read as part hereof. Said deed contains the following language authorizing the sale or mortgaging of the property "In trust nevertheless for the use and benefit of the parties who had contributed to the purchase thereof until disposed of, in the shares and proportions in which they have contributed with full power and authority however in said Croissant and Johnson or the survivor or his heirs from time to time to sell, mortgage or otherwise dispose of the same or any part thereof in their his or their discretion and the same or any par

thereof from time to time and at all times in their, his or their discretion to convey either in fee simple absolute or by way of trust or mortgage."

4. The books of the Syndicate show that George B. Starkweather is at present only possessed of three Syndicate Certificates of the twenty-four Certificates which have been issued by the Trustees. In his testimony in Equity Cause 16612 which your Respondents pray may be taken and read as part hereof, the said George B. Starkweather swears that he is the owner of the certificate issued to Sidney A. Sixbury. This makes four certificates in all that the said Starkweather now owns. These four certificates are
287 now the subject of litigation in Equity Cause No. 18750 which your Respondents pray may be taken and read as part hereof.

5. The matters and facts set forth in paragraph five of the Bill of Complaint in this cause filed are true but the complainant before deeding the said property to the defendants John O. Johnson and John D. Croissant, deeded several portions of the said lots 1 to 24 to certain purchasers thereof, regardless of the said subdivision, describing the property so conveyed by metes and bounds. That upon the property so conveyed houses have been erected. The plat accompanying this answer marked "Defendants' Exhibit A," more particularly shows the lots 1 to 24 and the portion of them conveyed to others not covered by the deed of trust, the subject of this suit.

6. That it is not true that lots one to forty-four of the Lewis Subdivision were free and unencumbered but they were sold under a deed of trust and were purchased at public sale by John O. Johnson and John D. Croissant, trustees, and were conveyed to them by the Trustees, Ashford and Stickney, by deed, recorded among the Land Records of the District of Columbia in Liber 1714 folio 137 *et seq.* a certified copy of which is an exhibit in Equity Cause No. 16,612, which the Respondents refer to and pray that it may be taken *as* read as part hereof. That no mortgage or deed of trust was ever placed by the Syndicate or its Trustees Johnson and Croissant, upon any portion of the whole tract of ten acres purchased of the Complainant including the seven acres and the Lewis Subdivision until the deed of trust to S. Herbert Giesy and Brainard H. Warner was made under which the Defendants, the said Giesy and Warner advertised certain portions of the Lewis Subdivision for sale. Prior to the purchase of the property by John O.
288 Johnson and John D. Croissant the Complainant George B. Starkweather had placed a number of incumbrances on the ten acres of land amounting to wit to $35,000. which said fact the complainant well knows. By the said deed of Ashford and Stickney recorded in Liber 1714, folio 137 *et seq.*, and the deed of the Complainant and his wife conveying the seven acres the Defendants John O. Johnson and John D. Croissant had full power to sell and convey any portion of the ten acres of land as is evidenced by the deeds and certified copies thereof which are exhibits in Equity Cause 16612, which the Respondents refer to and ask that it be taken and read as part hereof. That the deed of trust made to the Defendants S.

Herbert Giesy and Brainard H. Warner was to secure the notes a
alleged in the Bill of Complaint and that said notes were given fo
bona fide debts of the Syndicate. That the money raised by th
said notes was used to pay interest and taxes resting upon the prop
erty and for legal services necessary for the good of the Syndicate.

7. That it is true that the trustees, Brainard H. Warner and S
Herbert Giesy, have advertised for sale certain property included i
lots from one to forty-four of the Lewis Subdivision. The Trustee
have advertised this property by the metes and bounds and not b
the lots thereof for the reason that while J. C. Lewis made a sub
division of this land into forty-four lots as is shown in an exhibi
in Equity Cause 16612, the whole of such subdivision was neve
placed on record in the Office of the Surveyor of the District o
Columbia, but only a subdivision of twenty-four lots. The remain
ing twenty lots have no frontage on any public street and ar
289 now and always have been country and acreage property
Of the twenty-four lots comprising the recorded subdivision
portions have been deeded and conveyed prior to the time whe
John O. Johnson and John D. Croissant, trustees, became the own
ers thereof, absolutely without regard to the Subdivision and with
out reference to the lots. The Trustees believes that it would be mor
confusing to prospective purchasers to describe the excepted portion
of the Lewis Subdivision by metes and bounds than to describe them
by reference to the deeds and to point out at the time of the sale th
portions of the land not offered for sale. As these lots are occupie
by houses it would be an easy matter for purchasers to identify thes
excepted portions. The facts set forth herein are more particularl
shown by reference to the plat accompanying this answer marke
"Defendants' Exhibit A." The advertisement cannot be made mor
plain that it is except by the publication at the same time and to
gether with the trustees' advertisement of a plat showing the Lewi
Subdivision and the portions thereof excepted.

8. It is true that it was not stated in the advertisement the num
ber of acres proposed to be sold but such information it was deem
proper to announce at the sale. It is impossible to advertise thi
property by the lots of the Lewis Subdivision for the reason tha
lots 25 to 44 of said Subdivision are not of record and further tha
there is no ingress or egress to said twenty lots by any street or road
Lots 1 to 24 are so cut up by reason of the conveyance by George B
Starkweather, the complainant herein, of portions thereof withou
reference to said lots, that the property can only be sold advantage
ously as acreage property as is more definitely shown by referenc
to the plat accompanying this answer marked "Defendants' Exhibi
A."

290 9. That it is not true that Jenner and Spear as holders o
some of the notes secured by the deed of trust and as membe
of the Syndicate, are desirous of sacrificing this property and so hav
sought to have it advertised by a faulty and misleading description
The facts are that the complainant in this Bill, Mr. George B. Stark
weather has deliberately and maliciously embarrassed the operation
of this Syndicate wherever possible until the members thereof hav

become discouraged and disgusted and will not put any more money in the enterprise. The said George B. Starkweather concealed from the trustees the fact that there was a fifth trust on this property amounting to some $15,000, as will appear from reference to Equity Cause 16612, which your defendants hereby refer to and ask that it may be taken and read as part hereof. It will be seen that they had to allow their interest in the seven acres of land to be sold or pay the staid Starkweather $90,000 for the land which they had agreed to pay him $75,000 for. The trustees did lay an assessment on the Syndicate shares of stock of to wit $170 per share with which to pay the notes secured by the deed of trust under which the present sale is to be made. The complainant, George B. Starkweather was notified with the other members of the Syndicate to pay this assessment but not a cent has ever been realized by the trustees from such assessment.

10. The complainant, as hereinbefore set forth is the owner of only four of the twenty-four syndicate Certificates issued by the Trustees and his interest in the Syndicate does not amount to $20,000 as alleged but on account of the depreciation of the value of
291 the land and owing to the misfortune of the Syndicate the said Certificates are not now worth much more than $425. There is no purpose on the part of the Syndicate or the trustees advertising the property for sale to sell the property to Herbert W. T. Jenner but to knock the same down to the highest bidder.

Wherefore your Respondents having fully answered pray to be dismissed with costs.

BRAINARD H. WARNER.
S. HERBERT GIESY.
JOHN O. JOHNSON.
JOHN D. CROISSANT.
ELLIS SPEAR.
HERBERT W. T. JENNER.
HENRY J. GROSS.

We do solemnly swear that we have read the answer by us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief, we believe to be true.

BRAINARD H. WARNER.
S. HERBERT GIESY.
JOHN D. CROISSANT.
JOHN O. JOHNSON.
ELLIS SPEAR.
HERBERT W. T. JENNER.
HENRY J. GROSS.

Subscribed and sworn to before me this 26th day of April 1899.

HENRY E. COOPER,
Notary Public.

[SEAL.]

Subscribed and sworn to before me this 10th day of Aug. 1899 as to John D. Croissant.

JOHN R. YOUNG, *Clerk,*
By FRANK W. SMITH, *Ass't Cl'k.*

(Here follows diagram marked p. 292.)

293 *Opinion.*

Filed April 17, 1901.

In the Supreme Court of the District of Columbia.

In Equity. No. 20360.

STARKWEATHER
vs.
WARNER ET AL.

DECEMBER 31ST, 1900—11 o'clock a. m.

Now, in the case of Starkweather *vs.* Warner, a case that has in volved the taking of a good deal of testimony, and the examinatio of a great many papers and witnesses, and has been the subject o litigation for some time. The conclusion I reach is within a ver narrow compass.

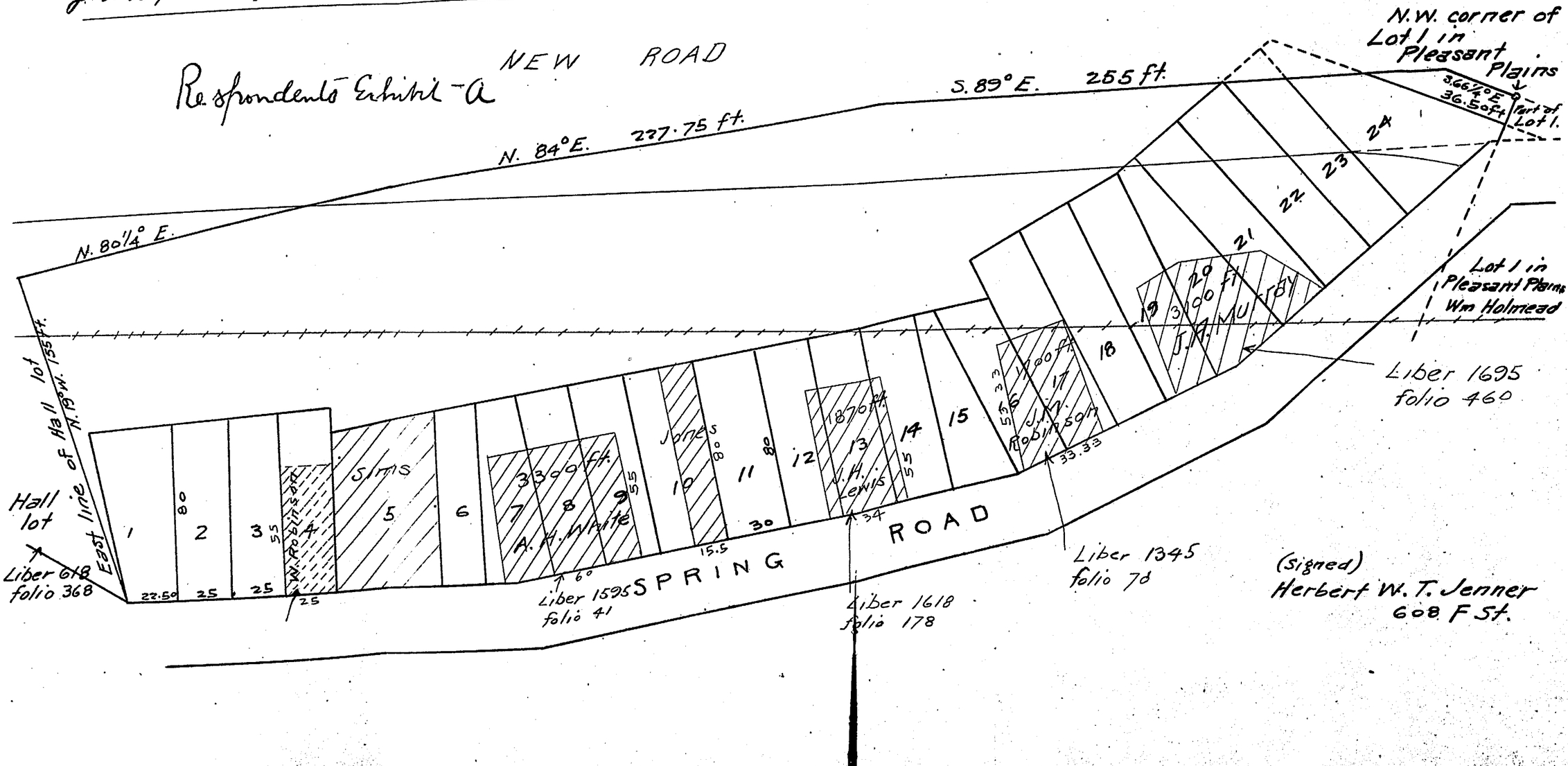
There were some parties that formed a syndicate to buy some pro erty out here in Mt. Pleasant back in 1892. The first paper, in th series of papers here, is not dated, but it was apparently back in 189 The title was supposed to be in the complainant, Starkweather. An they formed a company by which they were going to purchase th ground, and form a syndicate, and issue shares. And they signe a paper to the effect, a number of them did, Johnson, Croissant an Johnson, Parker, Barker, Stanley, Johnson, Stuart, Dyer, Sixbur Ellis Spear, Peale, Baker, Jenner, and perhaps some others. Th property was to be valued at $75000.00 and to be divided up in thirty syndicate shares. They signed a preliminary paper to th effect, and Croissant and Johnson were to be trustees to hold th property. The paper was signed and the property was boug
294 and the title taken absolutely in Johnson and Croissant, the first place, from Starkweather, and afterwards the de of trust upon the property at the time the title was so taken w foreclosed, and they took the title, from the trustees under th deed of trust to them in trust to sell, manage, &c. But after all th conveyancing was done, the title was put in these trustees for the ben fit of this syndicate. The contract was finally consummated by t declaration of trust that these parties executed, in the nature of sha

No. 1730

G. B. Starkweather vs. J. T. Dyer et al. } p. 292.

Scale 50 feet = 1 inch

Respondents Exhibit - A



(signed)
Herbert W. T. Jenner
608 F St.

f stock, or something similar to shares of stock, in corporations. They ad a stock book, and they issued certain syndicate certificates, as hey are called; and these certificates purport to set out the trust n which the trustees are holding this property; and they are not nly signed by the trustees, but they are signed by the party taking he syndicate certificate in evidence of his agreement as to the terms f the trust on which the property is held by the syndicate trustees; nd I am going to read this blank certificate. They are all alike in his respect, and they are all subsequent to the conveyance to those rustees, and subsequent to this preliminary paper, their subscrip- ion list, subscribing to the syndicate; and I must hold that the whole contract, whatever it had been before, or whatever it was in- ended to be, is now merged in this declaration of trust. (Reading.)

"Syndicate Certificate.

Know all men by these presents, that we, J. D. Croissant and John . Johnson, trustees, as joint tenants in fee under certain deeds from eorge B. Starkweather and Emma his wife, and recorded in the Land Records of the District of Columbia, hold the real 95 estate situated in the District of Columbia and designated as follows, to wit, All of those certain pieces or parcels of land nd premises known and distinguished as and being the 400,000 quare feet, more or less, known as Crescent Heights, at the junction f Fourteenth Street (extended) and Spring Street, Mt. Pleasant, . C.

Whereas John Jones has contributed $2500 of the sum expended or the purchase of said real estate, and is therefore entitled to one- hirtieth aforesaid undivided interest in said real estate.

Now, Therefore, in consideration of the premises and said pay- ent, receipt whereof from said John Jones is hereby acknowledged, e, the said J. D. Croissant and J. O. Johnson do hereby declare that e hold the said real estate upon trust as follows, for said John Jones, is heirs and assigns, to the extent of one-thirtieth aforesaid undi- ided interest aforesaid; that is to say: In and upon the trusts set orth and declared in said deed."

Now, that reference is misleading, if it is dependent upon that eed to declare the trust, because there is no trust declared in it at l. It is an absolute deed upon its face, and it is the only deed that referred to in the syndicate certificate.

(Reading.)

"It is further understood and agreed as follows: The trustees hall be entitled to a joint commission of three per cent."

Now, there was no trust in that way, but they were simply hold- ng it in fee, as far as that deed is concerned. That changed the rms of the original subscription list, which was five per cent.

(Reading.)

96 "On all receipts except from assessments heretofore or here- after paid by members of the syndicate, and from loans ne- otiated by the trustees.

Now, that fixes their compensation.

(Reading.)

This declaration and the interest hereunder shall, at all times, b subject to assessment for its proportionate part of money necessar to pay the expenses incurred in the execution of the trusts, as pro vided in the deed to said trustees, hereinbefore recited,"

Another misleading recital as far as that deed is concerned, be cause there was nothing in it.

(Reading.)

"Which said assessment shall be payable in thirty days after writte notice thereof shall have been mailed, post paid, to the person as sessed, or personally served upon him, and in default of such pay ment, the said trustees, or the survivor of them, are hereby authorize to sell the interest of such person so in default, either at public o private sale, after such notice and upon such terms as they or th survivor shall deem best, and to transfer such interest to the pu chaser, free from liability on his part, for the application of the pu chase money. In the event of any such sale the proceeds shall firs be applied to the payment of the assessments in default, with intere at 6 per cent. from date of notice until paid, and the surplus sha be paid over to the owner of such interest, his heirs or assigns.

"This declaration and the interest hereunder may be transferre by writing under seal, and upon such transfer the assigne
297 declaration shall be surrendered to the trustees and a ne declaration issued in the name of the purchaser, and th trustees shall not be bound to take notice of the rights of a tran feree who fails to surrender such assigned declaration, and to pr cure a new one in his own name.

"Any transferee of such declaration, and the interest hereunde shall hereby be subrogated to all the rights and subjected to all th liabilities of the original holder; and the said John Jones, as ev dence of the acceptance of this declaration, and to confer all nece sary power upon said trustees, and the survivor of them, in th premises, as above set forth, has hereunto set his hand and seal th day and year last herein written," &c.

Now, I think that that paper must be taken as the chart to gui these trustees in the conduct of their business.

This property is owned in shares; there may be thirty parties different parties owning the property, having the beneficial interest it. These trustees are holding it for their benefit, and on the trus that they have stated in these certificates; and I think they must limited and guided by those trusts.

Now, in this case, the syndicate went along for a while, and mone were to be had sufficient to pay certain costs, and then other expens were necessarily added on the incumbrance and taxes on the pro erty, and perhaps other expenses were necessary, and these truste raised the money as best they could to meet these. And after th had raised the money they conceived the idea of executing a de of trust on the whole property. Not the whole property th
298 was to be covered by these syndicate certificates, but on th portion of the tract that was laid out in lots. So they made

eed of trust to Warner and Giesy as trustees and secured some of
ne members of the syndicate, and some other parties, perhaps; but
ney are all members of the syndicate. At any rate, to secure monies
hich the trustees saw were necessary to be raised for the purpose
f paying the expenses that were properly chargeable to all the mem-
ers of the syndicate, to be applied to the payment of the taxes
n the property, and pay the interest; and by executing that deed of
ust they placed the property, of course, in the power of those trus-
es and the parties acknowledging the different interests secured,
foreclose and take the title entirely away from these syndicate
olders, if they had power to do so. And under that deed of trust,
e notes not having been paid at maturity, the property was sold
nd the sale passed upon and confirmed. An injunction, I think,
as asked, and perhaps not granted; but at any rate the sale was
nfirmed, and the case finally came on for hearing at this term of
ourt on its merits. Proof has been taken, and now the question is,
hat shall be done with that deed of trust, and what shall be done
th that sale?

The bill does not expressly ask to have that deed of trust cancelled,
t does ask that the trustees should be perpetually enjoined from
ecuting it, on the ground that the trustees, John D. Croissant and
hn O. Johnson, were without power to execute such a deed of trust.
And I think that contention of the complainant, who is one of the
rtificate holders, having an interest in some of the certificates of
the syndicate—I think that contention is sustained by the
9 proof in the case; mainly by the certificate itself; that they
must be bound by that. They have undertaken to raise the
oney, or to secure money already raised by a deed of trust on the
operty, instead of by levying an assessment and sale of the shares
nder this certificate as they were authorized to do by the certificate
elf, and the powers laid down there. And I think the result of
is is that the deed of trust will have to be set aside, in effect, and its
ecution perpetually enjoined, and leave the trustees free to make
sessment, or to take such other proceedings as they may be advised,
enforce payments of the debts incurred for the benefit of all the
ndicate certificate holders. The bill is broad enough to cover
at relief, and it seems to me that this relief should follow the
nclusion that I have reached as to the powers. They held this
operty in trust for the benefit of all of them, and any one naturally
ould have authority to bring them into Court and to confine them
the powers that are set forth in this certificate, and require them
go on and execute these powers, and not go outside of it. It may
that outside of that deed, some proceedings in equity might be
stituted for the benefit of all in the syndicate, but that would have
be done by some different proceeding. They can not sit down and
ecute a deed of trust, and put it in the hands of strangers, giving
em power to sell in case of default in the payment. These notes
at they have executed, they did not propose to pay them themselves.
ney executed them, perhaps, as trustees, and they seem to have
en very negligent in paying them. There may be no dereliction

on their part in not paying them. There was no money i
300 their hands to pay them with. They could not make sal
to pay them. And it seems to me that the only way—th
only proper way—is, if reasonable assessments were made and n
paid for them to sell the shares as provided; and that is the safe
way for the parties to act where they are bound by a deed of tru
like this.

A decree may be drafted in accordance with these suggestions i
behalf of the complainant.

Mr. GIESY: Your Honor, of course the trustees in the deed of tru
have been put to some expense in defending this suit here. The
have proceeded by consent of Court. And there was an injunctio
prayed before Judge Cox, and of course your Honor is familiar th
that injunction was dismissed and the sale directed to proceed, wit
a certain change in the advertisement. Acting under that directio
of the Court, the trustees have proceeded and of course incurre
advertisement expenses, and necessary expenses in defending th
suit. What is your Honor's ruling in regard to costs?

The COURT: Well, I won't dispose of that, I think, now. The
are going on on their own motion in the matter. They advertised t
property for sale. The Court did not stop them.

Mr. GIESY: The Court directed them to do certain things—chan
the advertisement, and proceed to the sale.

Mr. FORREST: That was a preliminary matter.

The COURT: I don't think I will be able to dispose of that th
morning. I think you had better prepare the decree and cons
about that afterwards.

301 Mr. GIESY: You said that the trustees may proceed
such way as they may deem best to procure the payment
these notes? Which trustees do you refer to?

The COURT: I refer to Croissant and Johnson, of course. Y
can put in, where I referred to those trustees, the words, Croissa
and Johnson. These are debts, if they are debts at all, of the sy
dicate. Of course, these trustees propose to pay them. They h
not any money to pay them with, and they have to get the mon
from the members of the syndicate.

Mr. FORREST: There was one thing further that I think M
Starkweather also asked for, an accounting.

The COURT: Well, I did not consider that question as to an
counting. It may be that if you were here properly for an accou
ing that an accounting could be had. There is some account pen
ing, as I understand. You had better look into that and see about

JOB BARNARD, *Justice.*

April 18, 1901.

302 *Final Decree.*

Filed January 31, 1901.

In the Supreme Court of the District of Columbia.

In Equity. No. 20360.

GEORGE B. STARKWEATHER
vs.
BRAINARD H. WARNER ET AL.

This cause coming on to be heard upon the pleadings; testimony and other papers in the cause and being argued by counsel for the respective parties on due consideration thereof, it is this 4th day of January, 1901, by the Court adjudged, ordered and decreed that the deed of trust dated the 28th day of January, 1898, from John D. Croissant and John O. Johnson, trustees, to the defendants Brainard H. Warner and S. Herbert Giesy as trustees, and recorded among the land records of the District of Columbia in Liber 2279 at folio 259, be and the same hereby is set aside as null and void, and as being beyond the authority of the said trustees, Johnson and Croissant, to execute and deliver together with all proceedings thereunder heretofore had, and the execution of said trust is hereby perpetually enjoined and restrained.

It is further Ordered that the complainant recover of the defendants, except the defendants Warner and Giesy, trustees, his costs in this behalf expended, with execution therefor as at law.

JOB BARNARD, *Justice.*

303 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 302, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23,436 in equity, wherein John T. Dyer, *et al.*, are Complainants, and John D. Croissant, *et al.* are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 29″ day of September, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1730. George B. Starkweather, appellant, *vs.* John T. Dyer *et al.* Court of Appeals, District of Columbia. Filed Sep. 29, 1906. Henry W. Hodges, Clerk.

RETURN TO WRIT OF CERTIORARI.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1907.

No. 1730.

GEORGE B. STARKWEATHER, APPELLANT,

vs.

OHN T. DYER, HERBERT W. T. JENNER, E. SOUTHARD PARKER, ET AL.

FILED FEBRUARY 9, 1907.

HE UNITED STATES OF AMERICA, *ss:*

he President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

[Seal Court of Appeals, District of Columbia.]

Whereas in a certain suit in said Supreme Court between John T. yer, Herbert W. T. Jenner, E. Southard Parker, *et al.*, complainnts, and John D. Croissant, John O. Johnson, Trustees; Henrietta uart, George B. Starkweather, *et al.* defendants, Equity No. 23436 hich suit was removed to the Court of Appeals of the District of olumbia by virtue of an appeal, agreeably to the act of Congress such case made and provided, a diminution of the record and proedings of said cause has been suggested, to wit:

1. The original bill in this cause, filed July 24, 1902.
2. Demurrer to said original bill filed December 4, 1902.
3. Order of Court sustaining demurrer, filed February 5, 1903.

You, therefore, are hereby commanded that, searching the record d proceedings in said cause, you certify what omissions, to the tent above enumerated, you shall find to the said Court of Appeals, that you have the same, together with this writ, before the said urt of Appeals forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 5th day of February, in the year of our lord one thousand nine hundred and seven.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia. No 1730, January Term, 1907. George B. Starkweather, Appellant, *vs* John T. Dyer, *et al.* Writ of Certiorari.

Bill to Settle a Trust & for an Accounting.

Filed July 24, 1902.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER, HERBERT W. T. JENNER, E. SOUTHARD PARKER, WILLIAM E. BARKER, ELLIS SPEAR, ALBERT C. PEALE, BRAINARD H. WARNER, Complainants,

vs.

JOHN D. CROISSANT, JOHN O. JOHNSON, Trs.; HENRIETTA STUART, GEORGE B. STARKWEATHER, ROBERT G. CAMPBELL, WILLIAM H. YERKES and CHARLES A. BAKER, Partners, Trading under the Firm Name of Yerkes and Baker; S. HERBERT GIESEY, THOMAS J. OWEN, Defendants.

To the Supreme Court of the District of Columbia, holding an equity court for said District, complainants respectfully represent as follows:—

First: That they are all citizens of the United States, and all reside in the District of Columbia, except the said John T. Dyer, who is a resident of Norristown, State of Pennsylvania; and all sue in their own right.

Second: Complainants further state that all of the defendants are citizens of the United States and residents of the District of Columbia. The defendants John D. Croissant and John O. Johnson are sued as trustees under a certain deed in trust, hereinafter set out; the defendants Henrietta Stuart, George B. Starkweather, Robert G. Campbell and Thomas J. Owen are sued in their own right; the defendant S. Herbert Giesey is sued as the assignee or trustee of certain syndicate certificates now owned by the defendant John O. Johnson, as hereinafter set out; the defendants Yerkes and Baker are also sued as the holders of certain syndicate certificates owned by the defendant George B. Starkweather, as hereinafter set out.

Third: Complainants aver that on or about May 2d., 1892, the defendant George B. Starkweather entered into a contract in writing

with the defendants John D. Croissant and John O. Johnson, whereby the said Starkweather agreed to sell unto the said John D. Croissant and John O. Johnson, 400,000 square feet of ground, situate at the junction of Fourteenth Street and Spring Street, Mount Pleasant, in the County of Washington, District of Columbia; the said Starkweather to have the privilege of removing all buildings from said premises within the period of thirty days, upon written notice from the said trustees so to do. He agreed to deliver all ground in the original tract owned by said Starkweather; all the Spring Street property owned by him; also all the Spring Street front then owned by colored people; the title to be good, or money refunded. The price of the tract was to be $75,000; with privilege reserved by said Starkweather of subscribing for an amount up to fourteen shares, of $2500 each, whenever a syndicate should be organized; balance not subscribed by the said Starkweather, to be payable as follows: one half in cash; balance to be applied to the liquidation of trusts then upon said property, as shown by the abstract; in the event these trusts should be found to exceed the balance due to him, the said Starkweather, he agrees to surrender to the said trustees, the said Croissant and Johnson, such an amount of his said subscription, as may be found necessary to cover and remove these trusts. Said agreement contained other provisions not necessary to be here set out. Subsequently, to wit, on May 27th, 1892, said agreement was modified, in manner following, to wit: the total cost of said property, including that held by certain colored people, was to be $75,000; said George B. Starkweather was to obtain the titles to said portions of said tract, held by said colored people, by June 1, 1892; and in the event he failed to obtain them by that date, then the said Croissant and Johnson trustees, were authorized to purchase the same at the lowest possible price; not to exceed, however, 34 cents per square foot; a deed of all the property then owned by said Starkweather, known as the Crescent Heights property, was to be executed and delivered unto the said Croissant and Johnson, trustees. The said agreement formally ratified also the said agreement of May 2d., 1892. Said modification also provided that a certain bond lien for $10,000 was to be left to the said Starkweather to settle; that $10,000 cash was to be paid to him as soon as the deed to seven acres, part of said tract, should be executed and delivered by him, the said Starkweather. Complainants further aver that contemporaneously with the contract for the purchase of this property, the said John D. Croissant and John O. Johnson entered into a contract in writing with the complainants E. Southard Parker, William E. Barker, Ellis Spear, Albert C. Peale, John T. Dyer and Herbert W. T. Jenner, and the defendants Henrietta Stuart, George B. Starkweather, Robert G. Campbell, and others, for the formation of a syndicate, for the purchase of the hereinbefore described property, upon the terms and provisions hereinbefore set out; with the further understanding and agreement that the said Croissant and Johnson, were to be the trustees for said syndicate, with full power to manage and sell said property, for which they were to have a certain compensation therein agreed upon; the profits derived from

the sale of said property were to be divided among the shareholders of said syndicate, in proportion to their respective rights and interests. The real estate so to be acquired was to be divided into thirty equal shares, which were to be represented by syndicate certificates, to be issued by said Croissant and Johnson, trustees, as hereinafter set out. That pursuant to said contracts for the purchase of said real estate, the said George B. Starkweather and wife, by deed dated June 1, 1892, conveyed unto the said defendants, Croissant and Johnson, all of those certain pieces and parcels of land, being a part of that intended to be purchased by said syndicate, as aforesaid, and to be embraced in said agreement, hereinbefore referred to, more particularly described as follows: Part of Padsworth and Pleasant Plains, situate in the County of Washington, District of Columbia, beginning at large stone to the north of the Piney Branch Bridge, on the Fourteenth Street Road, which stone is also the beginning of the first line of Argyle, etc.; thence north 61½° E. 198 feet along the line of the York Estate; thence north 54° East 359 feet, along said line to the north east corner of the herein described tract; thence south 52½° East 290.40 feet to a stone; thence south 33½° East 300.30 feet to an oak tree; thence south 18¾° East 174.90 feet to what was the north west corner, to a stone of William E. Holmead's boundary; thence north 66¼° west 36.50 feet; thence north 89° west 255 feet; thence south 84° west 227.75 feet; thence south 80¼° west 181.50 feet to a stone; thence north 19° west 263 feet along the Capt. Hall line to a stone; thence south 63° west with the Hall line along a wagon road 113 feet; thence south 15° west 56 feet to east side of the Fourteenth Street road; thence north 28° west with said road, 205 feet to a point beyond Piney Branch Bridge; thence north 76½° east 79.20 feet to beginning; containing seven acres more or less being same land conveyed to George C. Starkweather in Liber 1172, folio 398 and Liber 1193, folio 272, and also all that piece of land adjoining the same, known as lot one (1) of the Holmead tract, bordering on the north and west line of Spring Street, and lying adjacent to the south and east line of the Lewis land, and south of the land of W. J. Rhee, which was transferred from William Holmead to Virginia C. Lewis, and recorded by deed thereof, July 14, 1886.

Said deed was made in and upon the following trusts, *inter alia*, to wit: to hold the same for the benefit of such persons as contributed to the purchase of said real estate, according to their respective contributions, as tenants in common, with power in said trustees, to sell, lease or mortgage, or to convey in fee simple; in their discretion; as will more fully appear by reference to said deed, which is recorded in Liber 1724, folio 112, of the Land Records of said District. Said real estate was at the time of said conveyance to the said Johnson and Croissant, as aforesaid, encumbered by a certain deed of trust made by the said George B. Starkweather and wife, bearing date January 29th, 1899, and recorded in Liber 1365, folio 248, one of the land records of said District, to secure a certain indebtedness therein set out; that default having been made in the payment of said indebtedness by the said George B. Stark-

weather, the said trustees under said trust, A. B. Duvall and C. C. Cole, pursuant to the powers vested in them by the same, sold said property at public auction; at which sale the said Herbert W. T. Jenner became and was the purchaser; he fully complied with the terms of said sale, and by deed bearing date on or about February 3, 1898, the said trustees conveyed said real estate unto the said Herbert W. T. Jenner, as trustee, the trusts not being declared, which deed was duly recorded in Liber 2294, folio 167, one of the land records of said District; and thereby the rights of the said syndicate, in and to the part of the said Crescent Heights property, so sold as aforesaid, became and were extinguished.

Complainants further aver that pursuant to said contracts of purchase, the said Starkweather and wife, did by deed bearing date May 2, 1892, and recorded in Liber 1698, folio 412, of the Land Records of said District, convey unto the said Johnson and Croissant, trustees, the following described pieces and parcels of real estate, situate in the county of Washington, District of Columbia, to wit: Lots number one (1) to forty-four (44), inclusive, in J. C. Lewis' subdivision of Pleasant Plains, situate on the north side of Spring Street, at the point of union with Fourteenth Street, extended, excepting nevertheless parts already deeded in fee to others. The plat referred to in this deed was never recorded in the Surveyor's office of the District of Columbia; but subsequently the said Lewis subdivided the portion of said tract, which fronts on Spring road, into twenty-four lots, which subdivision is recorded in Liber County No. 6, folio 113, of the Surveyor's office of said District, a copy of which plat is filed herewith, marked "Complainants' Exhibit No. 1," and is prayed to be considered in connection herewith. A more accurate description of the property intended to be conveyed by said deed, is as follows, to wit: Beginning at a point at the north west corner of said lot one (1), in Pleasant Plains; thence south 66¼ degrees east to north line of Spring Street; thence with said north line of Spring Street as laid down on plat recorded in the Surveyor's office of the District of Columbia, in County Book 6, page 113, to the east line of land conveyed to Hall by deed recorded among the land records in Liber 618, folio 368; thence with said Hall's east line, north 19° west 155 feet; thence north 80¼° east 181.50 feet; thence north 84° east 227.75 feet; thence south 89° east 255 feet; thence south 66¼° east 36.50 feet to the place of beginning; excepting nevertheless, such parts of said tract as had already been conveyed by said Starkweather. Said real estate was to be held in and upon the same trusts as those declared and set out in the deed from said Starkweather and wife to said grantees, recorded in Liber 1724, folio 112, hereinbefore referred to; but said trusts were not set out or declared in said deed.

The said Starkweather having failed to purchase and acquire title to the lots conveyed by him to certain colored people, as specified by the contract of purchase, complainants aver further that the said Johnson and Croissant, as trustees, as aforesaid, did, pursuant to said understanding and agreement, purchase certain of said lots that had been conveyed by the said Starkweather, as aforesaid,

to wit: from Lewis Mason and wife, by deed dated June 17, 1892, and recorded in Liber 1698, folio 414, 1674 square feet, more or less; from Charles Shorter and wife, by deed dated June 24, 1892, and recorded in Liber 1698, folio 416, 1650 square feet, more or less; and from Albert Lewis and wife, by deed dated June 28, 1892, and recorded in Liber 1687, folio 339, 2200 square feet more or less; reference being hereby made to said deeds for a particular description of the real estate conveyed thereby.

Said real estate, at the time of the conveyance by the said Starkweather, as aforesaid, was encumbered by a deed of trust, made by himself and wife, dated April 29, 1890, and recorded in Liber 1488, folio 161, of the Land Records of said District, in which Mahlon Ashford and George W. Stickney were trustees. Default having been made by the said Starkweather in the payment of the indebtedness secured by said trust, the said trustees, in pursuance of the powers conferred upon them thereby, sold the hereinbefore described property, at public auction, unto the said Croissant and Johnson, Trustees, and conveyed the same to them by deed dated July 20, 1892, and recorded in Liber 1714, folio 137, of said land records, upon like trusts as those hereinbefore set out and declared in the conveyances by the said Starkweather to them, as aforesaid.

Fourth: Complainants further aver that the said defendants, Croissant and Johnson, as trustees, as aforesaid, did contemporaneously with, or shortly after the formation of said syndicate and the purchase of said property, issue certain syndicate certificates, to the parties having the beneficial interest in said property, the terms of which were in substance, as follows:—that they, the said Croissant and Johnson, as trustees, as joint tenants, in fee, under certain deeds from George B. Starkweather and wife, of record in the land records of said District of Columbia, hold certain real estate, situate in said District, known as the Crescent Heights, at the junction of Fourteenth Street, extended, and Spring Street, Mount Pleasant, in said District, containing about 400,000 square feet of ground; that whereas, "A. B." has contributed $2500 of the sum expended for the purchase of said real estate, and is therefore entitled to a one-thirtieth undivided interest in said real estate; in consideration of the premises and of said payment, the receipt whereof from the said "A. B." is hereby acknowledged, the said Croissant and Johnson trustees declare that they hold said real estate, in trust, as follows:—for the said "A. B.", his heirs and assigns, to the extent of a one-thirtieth interest; that is to say in and upon the trusts set forth in said deed. By the terms of said certificate, it was further understood and agreed, as follows:—

1st. That an allowance, therein specified, should be paid to the trustees, as compensation for their services.

2nd. That the certificate, and the interest thereby represented should be at all times subject to assessment for its *pro rata* part of the money necessary to pay the expenses of the execution of said trust, as provided in the deed to said trustees; which assessment shall be paid within thirty days after said notice shall be sent post paid to the holder of said certificate, or personally served upon him; and in de-

fault of such payment, that the said trustees, or the survivor of them shall be authorized to sell the interest of such person, so in default, either at public or private sale, after such notice, and upon such terms as they or the survivor of them shall deem best, and to transfer such interest to the purchaser, without liability on his part, to see to the application of the purchase money; said purchase money to be applied, first, in the payment of the assessment in default, with interest at six per cent from the date of notice, until paid; the balance to be paid over to such owner, or his heirs or assigns.

3rd. The interest represented by said certificate may be transferred in writing, under seal, and upon such transfer, the assigned declaration shall be surrendered to the trustees, and a new declaration issued in the names of the purchaser; and the trustees shall not be obliged to recognize the rights of any such transferee, who fails to surrender the purchased certificate, and procure a new one in his own name.

Fourth: The transferee of the interest represented by this certificate shall be subrogated to all the rights, and subjected to all the liabilities of the original holder; and the said "A. B." as evidence of his acceptance of said declaration, and in order to give all necessary power to said trustee, or the survivor of them, has subscribed said instrument of writing and set his seal thereto. On the back of said certificate is a blank form of transfer.

Of these syndicate certificates, twenty-four only were issued, instead of the thirty as originally intended; the remaining six shares were not subscribed for, and have never been issued by the said trustees. Of these twenty-four shares, four are now owned by the said George B. Starkweather, subject, nevertheless, to the lien or claim thereon of the said defendants, Yerkes and Baker, to whom the said Starkweather assigned them in blank, to secure a certain indebtedness, the amount of which is unknown to complainants, due, as they are informed and believe, and therefore state, from the said Starkweather, to them; and the said certificates are now in the actual custody of said Yerkes and Baker. Eight of said shares are owned and held by the complainant Herbert W. T. Jenner; two are owned and held by the complainant John T. Dyer, three are owned and held by the defendant John O. Johnson; the complainants Ellis Speare, E. Southard Parker, William E. Barker and Albert C. Peale, and the defendant Henrietta Stuart, each own one share, and the defendant Robert G. Campbell, three shares, making a total of twenty-four shares. The certificates issued to and standing in the name of the said John O. Johnson, were assigned in blank, by him, and delivered to, and are held by the defendant Giesey, to secure the payment of the assessment made by the said defendants Croissant and Johnson, as aforesaid.

Fifth: That thereafter, to wit, on January 20, 1898, the said syndicate was indebted to numerous persons, in a certain large sum of money, to wit, in the sum of $3648.26; that this indebtedness was incurred on account of taxes accruing due from time to time on said property, and on account of interest paid on trusts, and other expenses incurred in the administration of said trust; and being so

indebted, as aforesaid, the said Croissant and Johnson, as trustees assuming to act under the powers conferred upon them by said deed in trust, and by virtue of the syndicate certificates, issued the shareholders of said syndicate, as hereinbefore set out, did on the day and date aforesaid, execute and deliver unto the persons to whom said sums of money were due and owing, their promissory notes to secure said indebtedness, in manner following, to wit:—unto the said Ellis Spear, their certain promissory note, payable to his order, for the sum of $2378.79; and unto the said Herbert W. T. Jenner, two certain promissory notes, payable to his order, one for the sum of $535.35, and the other for the sum of $180; and unto one Henry J. Gross, their certain promissory note, payable to his order, for the sum of $554.12; who endorsed said note, in due course of business, unto the complainant, Brainard H. Warner; all of said notes were payable in one year after date thereof, with interest at the rate of six per cent per annum. In assumed pursuance of the powers aforesaid, in order to secure said indebtedness, the said trustees executed and delivered in due form of law, a deed of trust upon the three acre tract herein before more particularly described, unto the defendant, the said S. Herbert Giesy, and the complainant, Brainard H. Warner, which said deed of trust is recorded in Liber 2279, folio 259, of said land records. Said notes were not paid at maturity, nor have they nor any part of them yet been paid, and the same are now long over due. After default had been made in the payment of said indebtedness secured by the said trust, as aforesaid, in pursuance of the powers attempted to be conferred upon them by said deed of trust the said trustees did, on or about the 27th. day of April, 1899, advertise said property for sale, at public auction, which sale was to take place on May 5th., of that year; at which time said property was sold in accordance with the terms of said advertisement, and was struck off to various persons, who became the purchasers at such sale. That before deeds were given to the purchasers, to wit, on April 18, 1899, the defendant, the said George B. Starkweather exhibited his bill in equity in this court against Brainard H. Warner and S. Herbert Giesey, trustees under said deed of trust, John D. Croissant and John O. Johnson, trustees, as aforesaid, and others praying for an injunction, and that said sales be set aside and for naught held. Said cause proceeded to a final hearing and decree, in which the court decreed that the said deed of trust made by the said John D. Croissant and John O. Johnson, to the said Warner and Giesey was void, and set the same aside, as being in excess of the powers of the said trustees, Croissant and Johnson to execute; that it was their duty to have assessed the stockholders of said syndicate under the powers conferred upon them by the syndicate certificates and so have paid the indebtedness, instead of securing the same by deed of trust upon its property. All of which will more fully and at large appear, by reference had to said cause, which is known as Equity Cause No. 20,360.

Thereupon the said trustees, Croissant and Johnson, proceeded to assess the shareholders of said syndicate, and sent notices to the individual members thereof, as required by the terms of said syndicat

certificates; among others, they assessed the said George B. Starkweather, for his proportional share of the indebtedness due and owing by said syndicate; whereupon, on the 15th. day of March, 1901, the said George B. Starkweather exhibited his bill in equity, in this court, against the said Croissant and Johnson, and the defendant Thomas J. Owen, seeking to restrain them, the said Croissant and Johnson, from collecting said assessment, as provided by the terms of said syndicate certificates, and the notice served upon the said Starkweather, in pursuance thereof; and the said Thomas J. Owen, from acting as auctioneer in the sale of the syndicate certificates standing in the name of said Starkweather. The bill further sought for an accounting from the said Croissant and Johnson, as trustees of the Crescent Heights syndicate. Subsequently thereto, to wit, on March 18, 1901, the defendant Henrietta Stuart intervened and was made party complainant to said bill. Answers were filed, some evidence has been taken, but the cause is still pending in this court, and has not reached a decree; as will more fully and at large appear by reference had to said cause, which is known as Equity Cause No. 22,124.

That heretofore, to wit, on May 6th, 1896, the said George B. Starkweather exhibited his bill in equity against the defendants Johnson and Croissant, trustees, and the complainant Herbert W. T. Jenner, setting up the purchase of the said Crescent Heights property by the said Johnson and Croissant, from the said complainant, substantially as hereinbefore stated; that they, as such trustees, in violation of their duty and contract obligations to him, had conveyed certain portions of said real estate unto the said Herbert W. T. Jenner, for a nominal consideration; and charging further that the said defendants in said bill, Croissant and Johnson, were paying more for the purchase of the holdings on the Spring road than was necessary. The bill sought for a specific performance of said contract, requiring the said Johnson and Croissant to secure the control of said Spring road real estate; that the deed from them to the defendant Jenner be cancelled and set aside, and that the said trustees make an accounting, and that they be required to pay to him such moneys as might be found to be due to him under such accounting. The bill also contained an alternative prayer that in the event a decree for specific performance be denied, said sale of said real estate be annulled, and that an account be had and taken between the parties. To this bill answers were filed, evidence taken, and the case is now pending before the auditor, where it has been for a number of years last past, without any action taken on the part of the complainant to bring the same to a final hearing and decree; all of which will appear by reference had to said case, which is known as Equity Cause No. 16,612, to which reference is hereby made.

Complainants aver that true it is, as stated in said last named bill, that the said Croissant and Johnson, as trustees, as aforesaid, did by deed dated April 6, 1895, convey unto the said complainant, Herbert W. T. Jenner, a portion of the three acres, hereinbefore described, to wit, lots one (1) to four (4), and six (6) to seventeen (17), in Lewis' subdivision as recorded in County Book No. 6,

page 113, as hereinbefore referred to. These complainants ave that said conveyance was made because of an indisposition on th part of some members of said syndicate to pay any more mone on account of the purchase of said property, and because one o said trustees, the defendant John O. Johnson, declined to make an assessment therefor, and the said Jenner in order to save said prop erty from waste, and himself and the other members of the syndi cate from loss, was willing to advance such money as might b necessary, from time to time, to pay the taxes upon said property to prevent its passing into hostile hands, and to advance such othe sums of money as might be necessary to protect the interests of sai syndicate; that from time to time he purchased certain portion of said property at tax sales, and acquired a number of lots in tha way, and held them for the benefit of the syndicate, until Janu ary 28, 1898, when a loan was secured upon said property, an the indebtedness due to the said Jenner for money advanced by hi from time to time, as aforesaid, having been either secured or paid he executed in due form of law, a deed in trust re-conveying a his right title and interest in said property, acquired under sai deed from said Johnson and Croissant, trustees, and also from th tax deeds made to him, from time to time, by the District of Colum bia, unto the said Johnson and Croissant, as aforesaid, upon th same trusts as were set out in the original deeds conveying the tit to the said trustees. Said deed is recorded in Liber 2279, folio 25 of the land records of said District, and is hereby referred to i connection with this averment of this bill. The money to rein burse said Jenner for the sum so advanced by him as aforesaid, wa obtained by the said trustees, Johnson and Croissant executin their notes and the deed of trust of even date with said deed, a hereinbefore set out. Complainants further aver that on Februar 27, 1899, the said Starkweather exhibited his further bill in equit against the complainant, Herbert W. T. Jenner, the defendants Croi sant and Johnson, trustees, Robert G. Campbell and S. Herbe Giesey, and the complainant Brainard H. Warner, which said wi averred as therein stated, and prayed that the said defendant, He bert W. T. Jenner be directed to reconvey to the said trustees o Crescent Heights Syndicate, the seven acres of land purchased b him, as set out in the third paragraph of this bill; and praye among other things, that the defendants, Croissant and Johnson b removed from acting further as trustees for the Crescent Heigh Syndicate, and that their successors be appointed; that said Giese and Warner, as trustees under the deed of trust described in th fifth paragraph of this bill, be restrained from selling said pro erty embraced in said trust, pending this suit. To this bill th defendant Jenner demurred; the defendants Giesey and Warne filed pleas; the defendant Campbell has not yet answered. Th case is now pending in the condition stated as shown by the record of this court, which said cause is known as Equity Cause No. 20,20 and is prayed to be read and considered in connection herewith.

Sixth: Complainants further aver, that they, the said John T Dyer, Herbert W. T. Jenner, E. Southard Parker, William E

Barker, Ellis Spear and Albert C. Peale, together with the defendants George B. Starkweather, Henrietta Stuart, John O. Johnson and Robert G. Campbell, are, subject to the debts due and owing by the said Crescent Heights Syndicate, the equitable owners, in fee simple, of the three acres of ground, more or less, more particularly described in the third paragraph of this bill; that the same is not susceptible of partition in kind, without loss and injury to them; and that it is for the interest and advantage of all the parties having beneficial interest in said property, that the same be sold, and, after the payment of the expenses of this suit, and the debts due from said syndicate, that the proceeds be divided among them, in accordance with their respective rights and interests. Complainants aver that the trustees of said syndicate, the said Croissant and Johnson, have never made a statement of account to the syndicate certificate holders, from the organization of said syndicate, to the present time; and complainants do not know, and are unable to state how much money has been received by said defendant trustees, and what amounts have been disbursed by them, and how. To make such an accounting the said trustees have hitherto failed and refused to do, though often requested, and still fail and refuse so to do. Complainants are informed and believe, and therefore state, that they are entitled to an accounting from said trustees, under the decree of this court, and that such an accounting is a necessary preliminary to making any assessment on said share-holders for the payment of the indebtedness due and owing by said syndicate; and until such accounting is had, no assessment can be made that is satisfactory to them, and the parties beneficially interested in said property. The property is being wasted by the accumulation of taxes against it, and it has been sold, from time to time, for default in the payment of taxes, and the rights and interests of the parties beneficially interested therein, have become thereby imperiled.

Complainants, being without remedy at law, therefore bring this suit in equity, and pray as follows:—

Prayers.

First: That the United States writ of subpœna may issue, addressed to said defendants, commanding them to appear, and answer the exigency of this bill, but not under oath; answer under oath, being hereby expressly waived.

Second: That the defendants John D. Croissant and John O. Johnson, as trustees, as aforesaid, be required to account, under the direction of the court, for all the moneys received by them, since the formation of said Syndicate, to the time of such accounting, how disbursed, and on what account; and that they may be required to disclose what debts are due and owing by the said Syndicate, on what account, and to whom.

Third: That a decree may be passed directing said property to be sold, and appointing a trustee or trustees to make such sale, for the purpose of winding up the affairs of the Syndicate, and making partition of said property by sale.

Fourth: That if the proceeds derived from the sale of said pro
erty be found insufficient to pay the debts due from said Syndicat
and to pay in full the promissory notes made by the said Croissa
and Johnson, described in said fifth paragraph of this said bill
complaint, then, and in such an event, a personal decree may
entered against said Croissant and Johnson, in favor of the parti
holding said promissory notes in evidence of said indebtedness.

Fifth: That the defendant, the said George B. Starkweather
perpetually restrained from the further prosecution of the suits no
pending in this court, known as Equity Causes Nos. 16,612, 20,2
and 22,124, more particularly described in this bill.

Sixth: That complainants may have such other and further
lief, as the nature of the case may require.

HERBERT W. T. JENNER,
E. SOUTHARD PARKER,
ELLIS SPEAR,
BRAINARD H. WARNER,
JOHN T. DYER,
WILLIAM E. BARKER,
ALBERT C. PEALE,
By B. F. LEIGHTON, *Their Solicitor.*

The defendants to this bill are:—

John D. Croissant, John O. Johnson, Trs.; Henrietta Stua
George B. Starkweather, Robert G. Campbell, William H. Yerk
and Charles A. Baker, partners, trading under the firm name
Yerkes and Baker; S. Herbert Giesey, Thomas J. Owen.

B. F. LEIGHTON,
Solicitor for Complainants.

DISTRICT OF COLUMBIA, *To wit:*

We, Herbert W. T. Jenner, E. Southard Parker, Ellis Spear a
Brainard H. Warner, being first duly sworn, on oath say that
have read the foregoing bill by us subscribed, and know the conte
thereof; that the facts therein stated of our own knowledge,
true, and those stated upon information and belief, we believe
be true.

HERBERT W. T. JENNER.
E. SOUTHARD PARKER.
ELLIS SPEAR.
BRAINARD H. WARNER.

Subscribed and sworn to before me, this 23rd day of July, A.
1902.

C. CLINTON JAMES, [SEAL.]
Notary Public, D. C.

Demurrer of George B. Starkweather to Bill.

Filed December 4, 1902.

In the Supreme Court of the District of Columbia.

In Equity. No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

This defendant by protestation, not confessing or acknowledging ll or any of the matters and things in the said Bill of Complaint ontained to be true in manner and form, as the same are therein set orth, doth demur thereto, and for cause of demurrer show:

That the said complainants have not in and by their said Bill ated such a case as doth or ought to entitle them to any such relief is thereby sought and prayed for against this defendant.

Wherefore and for divers other errors and imperfections in the id Bill contained this defendant demands the judgment of this urt whether he shall be compelled to make any further or other nswer to the said Bill or any of the matters and things therein con- ined; and prays to be hence dismissed with his reasonable costs in is behalf sustained.

R. P. EVANS,
EDWIN FORREST,
Solicitors for Defendant Starkweather.

I, Edwin Forrest, one of the solicitors for defendant, George B. arkweather, certify that in my opinion the above demurrer is well unded in law and is not interposed for delay.

EDWIN FORREST,
Of Solicitors for said Defendant.

Affidavit of defendant George B. Starkweather, that the above de- urrer is not interposed for delay, is hereby waived.

_____,
Solicitor for Complainants.

Demurrer of Defendant Sustained with Leave to Amend.

Filed February 9, 1903.

In the Supreme Court of the District of Columbia.

No. 23436.

JOHN T. DYER ET AL.
vs.
JOHN D. CROISSANT ET AL.

This cause coming on to be heard upon the demurrer of the de fendant George B. Starkweather to the Bill of Complaint herein, afte argument by counsel, and upon due consideration thereof, it is thi 9" day of February 1903 by the Court adjudged, ordered and decreed that said demurrer be and the same is hereby sustained with leav to the Complainants to amend their Bill of Complaint as they ma be advised within thirty days hereof.

A. B. HAGNER,
Asso. Justice.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District o Columbia do hereby certify in obedience to the Writ of Certiora hereto attached and returned herewith, that the foregoing are tru and correct copies of

"1. The original bill in this cause, filed July 24, 1902
2. Demurrer to said original bill filed December 4, 1902
3. Order of Court sustaining demurrer, filed February 5, 1903"

containing the words and figures omitted from the record hereto fore transmitted to the Court of Appeals of the District of Columbi in cause entitled George B. Starkweather, Appellant, *vs.* John T Dyer, *et al.,* Equity No. 23436.

In testimony whereof I hereunto subscribe my *my* name and affi the seal of said Court, at the City of Washington, in said Distri this 9th day of February, A. D., 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1730. George B. Starkweather, appellant, v John T. Dyer, Herbert W. T. Jenner, E. Southard Parker, *et a* Return to writ of certiorari. Court of Appeals, District of Columbi Filed Feb. 9, 1907. Henry W. Hodges, clerk.